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No. 39]

NEW DELHI, SEPTEMBER 24—SEPTEMBER 30, 2017, SATURDAY/ASVINA 2—ASVINA 8, 1939

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत एवं पेंशन मंत्रालय

( कार्मिक और प्रशिक्षण विभाग )

नई दिल्ली, 19 सितम्बर, 2017

**का.आ. 2264.**—केन्द्र सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए जम्मू और कश्मीर राज्य सरकार, गृह विभाग, सिविल सचिवालय, जम्मू की सहमति से दिनांक 16.02.2017 की अधिसूचना सं. गृह/एआर/53/2015/689 की अधिसूचना के तहत, जम्मू और कश्मीर भ्रष्टाचार निवारण अधिनियम, सम्वत् 2006 की धारा 5(1)(घ) और 5(2) तथा आयुध अधिनियम, 1959 (1959 का अधिनियम सं. 54) की धारा 30 के साथ पठित आरपीसी की 120-ख, 420, 465, 467, 471, 472, 474 धाराओं के अधीन दिनांक 08.09.2014 के मामला सं. 7293/पीई-6 (एस)/2014/सीबीआई/एससी-1, नई दिल्ली तथा उपर्युक्त अपराधों के संबंध में अथवा क्रम में प्रयास करने, दुष्प्रेरण और षड्यंत्रों तथा इसके समान संव्यवहार अथवा समान तथ्यों के सामने आने पर किए गए किसी अन्य अपराध अथवा अपराधों के अन्वेषण के लिए, दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्ति और अधिकार क्षेत्र का विकास सम्पूर्ण जम्मू और कश्मीर राज्य में करती है।

[फा. सं. 228/43/2017-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

**MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS****(Department of Personnel and Training)**

New Delhi, the 19th September, 2017

**S.O. 2264.**—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Jammu and Kashmir, Home Department, Civil Secretariat, Jammu vide Notification No. Home/AR/53/2015/689 dated 16.02.2017, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Jammu and Kashmir to investigation of Case No. 7293/PE-6(S)/2014/CBI/SC-I, New Delhi dated 08.09.2014 under Sections 120-B, 420, 465, 467, 471, 472, 474 of RPC read with Section 5(1)(d) and 5(2) of the Jammu and Kashmir Prevention of Corruption Act, Samvat 2006 and Section 30 of Arms Act, 1959 (Act No. 54 of 1959) and attempts, abetments and conspiracies in relation to or in connection with the offences mentioned above and any other offence or offences committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/43/2017-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नई दिल्ली, 22 सितम्बर, 2017

**का.आ. 2265.**—केन्द्र सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए गांधीनगर स्थित गुजरात राज्य में केन्द्रीय अन्वेषण ब्यूरो द्वारा सौंपे गए दिल्ली विशेष पुलिस स्थापना (केन्द्रीय अन्वेषण ब्यूरो) द्वारा संस्थापित मामलों का ट्रायल न्यायालयों तथा विधि द्वारा स्थापित पुनरीक्षण या अपीलीय न्यायालयों में अपीलों/पुनरीक्षणों या उनसे उत्पन्न मामलों के अभियोजन का संचालन करने के लिए निम्नलिखित अधिवक्ताओं को उनकी नियुक्ति की तारीख से 3 वर्षों या अगले आदेशों तक, जो भी पहले हो विशेष लोक अभियोजक के रूप में नियुक्त करती हैं:-

सर्व श्री

1. मुकेश जी. कपाडिया;
2. दिनेश के. शर्मा;
3. आनंद मनोहरलाल गुलबानी;
4. शशिभूषण श्यामलाल शर्मा;
5. प्रवीण कुमार मानेकलाल त्रिवेदी ।

[फा. सं. 225/15/2017-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 22nd September, 2017

**S.O. 2265.**—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints following advocates as Special Public prosecutor for conducting prosecution of cases instituted by Delhi Special Police Establishment (Central Bureau of Investigation) in the State of Gujarat at Gandhinagar as entrusted to them by Central Bureau of Investigation in the trial courts and appeals, revisions or other matters arising out of these cases in appellate or revisional courts established by law for a period of three years from the date of appointment or further orders, whichever is earlier:-

S/Shri

- (1) Mukesh G. Kapadiya;
- (2) Dinesh K. Sharma;
- (3) Anand Manoharlal Gulabani;
- (4) Shashibhushan Shyamlal Sharma;
- (5) Pravin Kumar Maneklal Trivedi.

[F. No. 225/15/2017-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नई दिल्ली, 22 सितम्बर, 2017

**का.आ. 2266** केन्द्र सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हरियाणा राज्य सरकार, गृह विभाग, चंडीगढ़ की अधिसूचना सं. 20/12/2017-3 एचजीआई दिनांक 17.09.2017 के माध्यम से प्राप्त सहमति से भा.दं. संहिता की धारा 302 एवं आयुध अधिनियम की धारा 25/54/59, लैंगिक अपराधों से बालकों का संरक्षण (पीओसीएसओ) अधिनियम की धारा 12 एवं किशोर न्याय (जे.जे.) अधिनियम की धारा 75 के साथ पठित भा.दं. संहिता की धारा 34 के अधीन दंडनीय अपराध कारित करने के लिए पुलिस थाना भोंडसी, गुरुग्राम में पंजीकृत मामला एफआईआर सं. 250 दिनांक 08.09.2017 की जांच करने तथा उक्त मामले से सम्बद्ध अपराधों में किए गए प्रयासों, दुष्प्रेरणाओं और षड्यंत्रों तथा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न प्रासंगिक अन्य अपराधों की जांच करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का समस्त हरियाणा में विस्तार करती है।

[फा.सं. 228/45/2017-एवीडी- II]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 22nd September, 2017

**S.O. 2266.**—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Haryana vide Notification No. 20/12/2017-3HGI dated 17.09.2017 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole of the State of Haryana for investigation of Case FIR No. 250 Dated 08.09.2017 u/s 302 Indian Penal Code, 1860 (Act No. 45 of 1860) and Sections 25/54/59 of the Arms Act, (Act No. 104 of 1956), 12 protection of Children from Sexual Offences (POCSO) Act & 75 Juvenile justice (J.J.) Act r/w Section 34 IPC Police Station Bhondsi, Gurugram and attempts, abetments and conspiracies in relation to or in connection with the offences mentioned above and any other offence or offences committed in the course of the same transaction arising out of the same facts.

[F. No. 228/45/2017-AVD-II]

S. P. R. TRIPATHI, Under Secy.

**विदेश मंत्रालय**

(सी.पी.वी. प्रभाग)

नई दिल्ली, 12 सितम्बर, 2017

**का.आ. 2267.**—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्द्वारा, केन्द्र सरकार भारत के प्रधान कौंसलावास, वैनकूवर में श्री महेश शर्मा, सहायक अनुभाग अधिकारी को दिनांक 12 सितम्बर, 2017 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2016]

प्रकाश चन्द, निदेशक (कौंसुलर)

**MINISTRY OF EXTERNAL AFFAIRS**

(CPV DIVISION)

New Delhi, the 12th September, 2017

**S.O. 2267.**—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Mahesh Sharma, Assistant Section Officer as Assistant Consular Officers in Consulate General of India, Toronto to perform the Consular services with effect from 12th September, 2017.

[No. T-4330/01/2016]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 18 सितम्बर, 2017

**का.आ. 2268.**—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के दूतावास, बगदाद में श्री उमेश यादव, सहायक अनुभाग अधिकारी को दिनांक 13 सितम्बर, 2017 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2017]

प्रकाश चन्द, निदेशक (कौंसुलर)

New Delhi, the 18th September, 2017

**S.O. 2268.**—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Umesh Yadav, Assistant Section Officer as Assistant Consular Officers in Embassy of India, Baghdad to perform the Consular services with effect from 13th September, 2017.

[No. T-4330/01/2017]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 21 सितम्बर, 2017

**का.आ. 2269.**—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के दूतावास, हनोई में श्री मुकुल जैन, सहायक अनुभाग अधिकारी को दिनांक 21 सितम्बर, 2017 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2017]

प्रकाश चन्द, निदेशक (कौंसुलर)

New Delhi, the 21st September, 2017

**S.O. 2269.**—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Mukul Jain, Assistant Section Officer as Assistant Consular Officers in Embassy of India, Hanoi to perform the Consular services with effect from 21st September, 2017.

[No. T-4330/01/2017]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 22 सितम्बर, 2017

**का.आ. 2270.**—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के प्रधान कौंसलावास, दुबई में श्री बिनोद कुमार तिवारी, सहायक अनुभाग अधिकारी को दिनांक 22 सितम्बर, 2017 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2016]

प्रकाश चन्द, निदेशक (कौंसुलर)

New Delhi, the 22nd September, 2017

**S.O. 2270.**—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Binod Kumar Tiwari,

Assistant Section Officer as Assistant Consular Officers in Consulate General of India, Dubai to perform the Consular services with effect from 22nd September, 2017.

[No. T-4330/01/2016]

PRAKASH CHAND, Director (Consular)

## वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 21 सितम्बर, 2017

**का.आ. 2271.**—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) के साथ पठित, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स मिनरल लैब सर्विसेज प्राइवेट लि., डी. नं. 1-30-18, "श्री दुर्गम्बा निवास", ग्राउंड फ्लोर, 4 मेल, बंगडा कुलूर, आनंद गेराज के पास, कोटारा चौकी, मंगलूरु, कर्नाटक -575013, (जिसे एतदपश्चात् उक्त एजेंसी कहा जायेगा), को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय की शासकीय राजपत्र के भाग- II, खण्ड-3, उप खण्ड (ii), में दिनांक 20 दिसम्बर, 1965 की अधिसूचना सं. का.आ. 3975 के तहत प्रकाशित अधिसूचना में उपाबद्ध अनुसूचियों में विनिर्दिष्ट खनिज और अयस्क समूह-I, क्रम सं. 2 पर निर्दिष्ट लौह अयस्क को निर्यात से पूर्व निम्नलिखित शर्तों के अधीन मैंगलोर पत्तन, में उक्त खनिज और अयस्क के निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता देती है, अर्थात् :

- (i) यह अभिकरण, खनिज और अयस्क समूह- I का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा निमित्त नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और
- (ii) यह अभिकरण, इस अधिसूचना के अधीन अपने कार्यों के पालन में निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद् द्वारा समय-समय पर, लिखित रूप में, दिए गए ऐसे निर्देशों से आबद्ध होंगी।

[फा.सं. के-16014/17/2017- निर्यात निरीक्षण]

संतोष कुमार सारंगी, संयुक्त सचिव

## MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 21st September, 2017

**S.O. 2271.**—In exercise of the powers conferred by the sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963) read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises M/s. Minerals Lab Services Pvt. Ltd., D.No. 1-30-18, "Shri Durgamba Nivas", Ground Floor, 4<sup>th</sup> Mail, Bangra Kulur, Near Anand Garage, Kottara Chowki, Mangaluru, Karnataka-575013, as an agency (hereinafter referred to as the said agency), for a period of three years from the date of publication of this notification, for the inspection of Iron Ore specified at serial number 2 under the heading Minerals and Ores- Group I, in the Schedule to the notification number S.O. 3975, dated the 20<sup>th</sup> December, 1965, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 20<sup>th</sup> December, 1965, prior to export of the said Ores at Mangalore Port, subject to the following conditions, namely: -

- (i) the said agency shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to carry out the inspection specified under rule 4 of the Export of Minerals and Ores - Group I (Inspection) Rules, 1965;
- (ii) the said agency in performance of its functions under this notification shall be bound by such directions as the Director (Inspection and Quality Control), Export Inspection Council, may give, in writing, from time to time.

[F.No. K-16014/17/2017-Export Inspection]

SANTOSH KUMAR SARANGI, Jt. Secy.

नई दिल्ली, 26 सितम्बर, 2017

**का.आ. 2272.**—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) के साथ पठित, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स एसजीएस इंडिया प्राइवेट लिमिटेड, इकोस्पेस, ब्लॉक-3 ए, द्वितीय तल, ईस्ट विंग, परिसर IIF/11, एक्शना एरिया-II, राजरहाट, न्यू टाउन, कोलकाता- 700160, जिसे एतदपश्चात् उक्त एजेंसी कहा जायेगा, को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय की शासकीय राजपत्र भाग-II, खंड-3, उप खंड(ii), में दिनांक 20 दिसम्बर, 1965 की अधिसूचना सं. का.आ. 3975 के तहत प्रकाशित अधिसूचना में उपाबद्ध अनुसूचियों में विनिर्दिष्ट खनिज और अयस्क समूह-I, क्रम सं. 3 पर निर्दिष्ट फेरोमैंगनीज को निर्यात से पूर्व निम्नलिखित शर्तों के अधीन कोलकाता पत्तन, पश्चिम बंगाल में उक्त खनिज और अयस्क के निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता देती है, अर्थात् :

- (i) यह अभिकरण, खनिज और अयस्क समूह-I का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा निमित्त नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और
- (ii) यह अभिकरण, इस अधिसूचना के अधीन अपने कार्यों के पालन में निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद् द्वारा समय-समय पर लिखित रूप में दिए गए ऐसे निर्देशों से आबद्ध होंगी ।

[फा.सं. के-16014/15/2017- निर्यात निरीक्षण]

संतोष कुमार सारंगी, संयुक्त सचिव

New Delhi, the 26th September, 2017

**S.O. 2272.**—In exercise of the powers conferred by the sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963) read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises M/s.SGS India Private Limited, Ecospace, Block-3A, 2nd Floor, East Wing, Premises IIF/11, Actiona Area-II, Rajarhat, New Town, Kolkata - 700160, as an agency (hereinafter referred to as the said agency), for a period of three years from the date of publication of this notification, for the inspection of Ferromanganese specified at serial number 3 under the heading Minerals and Ores - Group-I, in the Schedule to the notification number S.O. 3975, dated the 20<sup>th</sup> December, 1965, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 20<sup>th</sup> December, 1965, prior to export of the said Minerals and Ores at Kolkata Port, West Bengal subject to the following conditions, namely: -

- (i) the said agency shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to carry out the inspection specified under rule 4 of the Export of Minerals and Ores - Group I (Inspection) Rules, 1965;
- (ii) the said agency in performance of its function as specified in this notification shall be bound by such directions as the Director (Inspection and Quality Control), Export Inspection Council may give, in writing, from time to time.

[F.No. K-16014/15/2017-Export Inspection]

SANTOSH KUMAR SARANGI, Jt. Secy.

नई दिल्ली, 26 सितम्बर, 2017

**का.आ. 2273.**—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) के साथ पठित, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स एसजीएस इंडिया प्राइवेट लिमिटेड, एसजीएस हाउस, प्लॉट नं आर -12 और एल -16, इंडस्ट्रियल स्टेट, बांध रोड, होस्पेट, कर्नाटक -583203, जिसे एतदपश्चात् उक्त एजेंसी कहा जायेगा, को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय की शासकीय राजपत्र भाग-II, खंड-3, उप खंड(ii), में दिनांक 20 दिसम्बर, 1965 की अधिसूचना सं. का.आ. 3975 के तहत प्रकाशित अधिसूचना में उपाबद्ध अनुसूचियों में विनिर्दिष्ट खनिज और अयस्क समूह-I, क्रम सं. 2 पर निर्दिष्ट लौह अयस्क को निर्यात से पूर्व निम्नलिखित शर्तों के अधीन न्यू मैंगलोर पत्तन, करवार पत्तन तथा बेलकरी पत्तन, में उक्त खनिज अयस्क के निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता देती है, अर्थात् :

- (i) यह अभिकरण, खनिज और अयस्क समूह-1 का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा निमित्त नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और
- (ii) यह अभिकरण, इस अधिसूचना के अधीन अपने कार्यों के पालन में निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद् द्वारा समय-समय पर लिखित रूप में दिए गए ऐसे निर्देशों से आबद्ध होंगी।

[फा.सं. के-16014/16/2017- निर्यात निरीक्षण]

संतोष कुमार सारंगी, संयुक्त सचिव

New Delhi, the 26th September, 2017

**S.O. 2273.**—In exercise of the powers conferred by the sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963) read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes M/s SGS India Private Limited, SGS House, Plot No. R-12 and L-16, Industrial State, Dam Road, Hospet, Karnataka-583203, as an agency (hereinafter referred to as the said agency), for a period of three years from the date of publication of this notification, for the inspection of Iron Ore specified at serial number 2 under Minerals and Ores Group-I, in the Schedule to the notification number S.O. 3975, dated the 20<sup>th</sup> December, 1965, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 20<sup>th</sup> December, 1965, prior to export of the said Minerals and Ores at New Mangalore Port, Karwar Port and Belekeri Port subject to the following conditions, namely: -

- (i) the said agency shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to carry out the inspection specified under rule 4 of the Export of Minerals and Ores - Group I (Inspection) Rules, 1965;
- (ii) the said agency in performance of its function as specified in this notification, shall be bound by such directions, as the Director (Inspection and Quality Control), Export Inspection Council may give in writing from time to time.

[F.No. K-16014/16/2017-Export Inspection]

SANTOSH KUMAR SARANGI, Jt. Secy.

### पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 21 सितम्बर, 2017

**का.आ. 2274.**— केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उप धारा (1) के अधीन जारी की गई, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 4078(अ) तारीख 14.12.2016 जिसका प्रकाशन भारत के राजपत्र संख्या 2974, भाग II, खण्ड 3, उप खण्ड (ii) तारीख 16.12.2016 में किया गया है। इस अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट तेलंगाना राज्य के मंडल मधिरा जिला खम्मम की भूमि में, ओडीशा राज्य में पारादीप से तेलंगाना राज्य में हैदराबाद तक पेट्रोलियम उत्पादों के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड के द्वारा क्रियान्वित किए जा रहे "पारादीप-हैदराबाद पाइपलाइन परियोजना" के संबंध में पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के लिए अपने आशय की घोषणा की थी:

और उक्त राजपत्र अधिसूचना की प्रतियाँ जनता को तारीख 30.12.2016 तक उपलब्ध करा दी गई थीं।

और उक्त अधिनियम की धारा 6 की उपधारा (1) के अनुसरण में सक्षम प्राधिकारी नें केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है।

और केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात् और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है:

अतः अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के उपयोग का अधिकार अर्जित किया जाए;

और केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने के बजाए सभी बिल्लिंगमों से मुक्त होकर इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा।

पेट्रोलियम और खनिज पाइपलाइन अधिनियम, 1962 की धारा 10 के अधीन किसी भी क्षतिपूर्ति के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड पूर्णतयः उत्तरदायी होगी और पाइपलाइन से संबंधित किसी भी मामले पर केन्द्रीय सरकार के विरुद्ध कोई वाद, दावा या कानूनी कार्यवाही नहीं हो सकेगी।

### अनुसूची

मंडल: मधिरा

जिला : खम्मम

राज्य : तेलंगाना

ग्राम का नाम	सर्वे नम्बर	क्षेत्रफल		
		हेक्टेयर	एयर	वर्ग मीटर
(1)	(2)	(3)	(4)	(5)
चिलकुरु	85	00	43	61
	103	00	13	54
	102	00	37	94
	101	00	29	65
	98	00	51	89
	138	00	40	14
	137	00	48	37
	136	00	00	45
	134	00	27	73
	133	00	24	74
	123	00	44	49
	121/1	00	11	79
	121/2	00	13	57
	121/3	00	03	21
	117	00	22	38
	115	00	11	11
	116	00	09	89
	111/2	00	02	58
	43	00	00	24
	40	00	31	01
	38	00	40	05

	36	00	05	65
	35	00	24	78
	34	00	27	60
इल्लुरु	52	00	02	00
	50	00	17	91
	51	00	16	36
वैरा नदी		00	27	52
	54	00	16	39
	53	00	05	87
सड़क		00	02	87
	60	00	07	12
	55	00	17	09
	59	00	29	90
	57	00	16	58
	66	00	07	62
	65	00	44	88
सड़क		00	01	96
	79	00	27	98
	80	00	43	37
	90	00	40	96
	91	00	03	69
	88	00	19	54
सड़क		00	01	67
	108	00	17	88
	107	00	12	11
सड़क		00	05	59
	191	00	06	18
	190	00	14	94
	185	00	04	44
	186/1	00	43	67
	186/4	00	03	17

	186/2	00	05	29
	186/3	00	02	19
	183/1	00	09	89
	183/21	00	05	09
	183/20	00	04	07
	183/19	00	03	30
	183/18	00	00	31
	183/5	00	00	01
	183/4	00	03	85
	183/3	00	04	71
रायापट्टनम	234	00	21	20
	285	00	38	12
	284	00	41	86
	328	00	07	82
	329	00	44	51
	330	00	02	13
	331	00	03	95
	337	00	37	18
	338	00	01	08
	340	00	29	61
	339	00	27	36
	346	00	53	01
	सड़क	00	02	73
	453	00	27	31
	सड़क	00	01	25
	390	00	13	16
	391	00	01	77
	389	00	03	76
	392	00	34	97
	393	00	10	05
	394	00	29	56

	400	00	24	60
	402	00	20	27
	404	00	58	25
	415	00	13	89
	410	00	50	40
	408	00	43	99
मदुपल्ली	638	00	24	70

[फा. सं. आर-25011/05/2016-ओआर-I(पार्ट)]

पवन कुमार, अवर सचिव

**MINISTRY OF PETROLEUM AND NATURAL GAS**

New Delhi, the 21st September, 2017

**S.O. 2274.**—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas, published in the Gazette of India No. 2974 Part-II, Section 3, Sub-section (ii) dated 16.12.2016 vide S.O. Number 4078 (E) dated 14.12.2016 issued under Sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act) the Central Government declared its intention to acquire the right of user in the land situated in Mandal Madhira, District Khammam in Telangana State, specified in the schedule appended to that notification for the purpose of laying pipeline for the transportation of petroleum products from Paradip in the State of Odisha to Hyderabad in the State of Telangana by the Indian Oil Corporation Limited for implementing the "Paradip-Hyderabad Pipeline Project".

And where as the copies of the Gazette was made available to the public till 30.12.2016.

And whereas the Competent Authority has under Sub-section (1) of Section 6 of the said Act, has submitted his report of Central Government.

And whereas, the Central Government after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire right of the user therein;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is hereby acquired for laying the pipeline;

And further, in exercise of the powers conferred by Sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the right of user of the said land for laying the pipeline shall, instead of vesting in the Central Government, vests on the date of publication of the declaration, in India Oil Corporation Limited, free from all encumbrances.

India Oil Corporation Limited shall be exclusively liable for any compensation in terms of Section 10 of the P & MP Act, 1962 and no suit, claim or legal proceeding would lie against the Central Government on any matter relating to pipeline.

**SCHEDULE**

Mandal : Madhira

District : Khammam

State : Telangana

Name of Village	Survey No.	Area		
		Hectare	Are	Square Metre
(1)	(2)	(3)	(4)	(5)
Chilkuru	85	00	43	61
	103	00	13	54

	102	00	37	94
	101	00	29	65
	98	00	51	89
	138	00	40	14
	137	00	48	37
	136	00	00	45
	134	00	27	73
	133	00	24	74
	123	00	44	49
	121/1	00	11	79
	121/2	00	13	57
	121/3	00	03	21
	117	00	22	38
	115	00	11	11
	116	00	09	89
	111/2	00	02	58
	43	00	00	24
	40	00	31	01
	38	00	40	05
	36	00	05	65
	35	00	24	78
	34	00	27	60
Illuru	52	00	02	00
	50	00	17	91
	51	00	16	36
	Wyra River	00	27	52
	54	00	16	39
	53	00	05	87
	Road	00	02	87
	60	00	07	12
	55	00	17	09
	59	00	29	90
	57	00	16	58
	66	00	07	62
	65	00	44	88

	Road	00	01	96
	79	00	27	98
	80	00	43	37
	90	00	40	96
	91	00	03	69
	88	00	19	54
	Road	00	01	67
	108	00	17	88
	107	00	12	11
	Road	00	05	59
	191	00	06	18
	190	00	14	94
	185	00	04	44
	186/1	00	43	67
	186/4	00	03	17
	186/2	00	05	29
	186/3	00	02	19
	183/1	00	09	89
	183/21	00	05	09
	183/20	00	04	07
	183/19	00	03	30
	183/18	00	00	31
	183/5	00	00	01
	183/4	00	03	85
	183/3	00	04	71
Rayapatnam	234	00	21	20
	285	00	38	12
	284	00	41	86
	328	00	07	82
	329	00	44	51
	330	00	02	13
	331	00	03	95
	337	00	37	18
	338	00	01	08
	340	00	29	61

	339	00	27	36
	346	00	53	01
	Road	00	02	73
	453	00	27	31
	Road	00	01	25
	390	00	13	16
	391	00	01	77
	389	00	03	76
	392	00	34	97
	393	00	10	05
	394	00	29	56
	400	00	24	60
	402	00	20	27
	404	00	58	25
	415	00	13	89
	410	00	50	40
	408	00	43	99
Madupalli	638	00	24	70

[F. No. R-25011/05/2016-OR-I (Pt.)]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 21 सितम्बर, 2017

**का.आ. 2275.—** केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उप-धारा (1) के अधीन जारी की गई, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 4077(अ) तारीख 14.12.2016 जिसका प्रकाशन भारत के राजपत्र संख्या 2974, भाग II, खण्ड 3, उप-खण्ड (ii) तारीख 16.12.2016 में किया गया है। इस अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट तेलंगाना राज्य के मंडल येरुपालेम जिला खम्मम की भूमि में, ओडीशा राज्य में पारादीप से तेलंगाना राज्य में हैदराबाद तक पेट्रोलियम उत्पादों के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड के द्वारा क्रियान्वित किए जा रहे "पारादीप-हैदराबाद पाइपलाइन परियोजना" के संबंध में पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के लिए अपने आशय की घोषणा की थी:

और उक्त राजपत्र अधिसूचना की प्रतियाँ जनता को तारीख 30.12.2016 तक उपलब्ध करा दी गई थीं।

और उक्त अधिनियम की धारा 6 की उपधारा (1) के अनुसरण में सक्षम प्राधिकारी नें केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है।

और केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है:

अतः अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के उपयोग का अधिकार अर्जित किया जाए:

और केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने के बजाए सभी बिल्लिंगमों से मुक्त होकर इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा।

पेट्रोलियम और खनिज पाइपलाइन अधिनियम, 1962 की धारा 10 के अधीन किसी भी क्षतिपूर्ति के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड पूर्णतया उत्तरदायी होगी और पाइपलाइन से संबंधित किसी भी मामले पर केन्द्रीय सरकार के विरुद्ध कोई वाद, दावा या कानूनी कार्यवाही नहीं हो सकेगी।

### अनुसूची

मंडल: येरुपालेम		जिला : खम्मम		राज्य : तेलंगाना	
ग्राम का नाम	सर्वे नम्बर	क्षेत्रफल			
		हेक्टेयर	एयर	वर्ग मीटर	
(1)	(2)	(3)	(4)	(5)	
केसिरेड्डीपल्लि	36	00	32	25	
	35	00	46	43	
	40	00	48	90	
	13	00	24	25	
	12	00	26	61	
	4	00	32	57	
	5	00	04	89	
	सड़क	00	02	06	
	79	00	58	54	
	58	00	33	86	
	50	00	28	60	
	61	00	00	69	
	49	01	15	18	
	63	00	04	17	

[फा. सं. आर-25011/05/2016-ओआर-I (पार्ट)]

पवन कुमार, अवसर सचिव

New Delhi, the 21st September, 2017

**S.O. 2275.**—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas, published in the Gazette of India No. 2974 Part-II, Section 3, Sub-section (ii) dated 16.12.2016 vide S.O. Number 4077 (E) dated 14.12.2016 issued under Sub-section (1) of Section 3 of the Petroleum and Minerals pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act) the Central Government declared its intention to acquire the right of user in the land situated in Mandal Yerrupalem, District Khammam in Telangana State, specified in the schedule appended to that notification for the purpose of laying pipeline for the transportation of petroleum products from Paradip in the State of Odisha to Hyderabad in the State of Telangana by the Indian Oil Corporation Limited for implementing the "Paradip-Hyderabad Pipeline Project".

And where as the copies of the Gazette was made available to the public till 30.12.2016.

And whereas the Competent Authority has under Sub-section (1) of Section 6 of the said Act, has submitted his report of Central Government.

And whereas, the Central Government after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire right of the user therein;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is hereby acquired for laying the pipeline;

And further, in exercise of the powers conferred by Sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the right of user of the said land for laying the pipeline shall, instead of vesting in the Central Government, vests on the date of publication of the declaration, in India Oil Corporation Limited, free from all encumbrances.

India Oil Corporation Limited shall be exclusively liable for any compensation in terms of Section 10 of the P & MP Act, 1962 and no suit, claim or legal proceeding would lie against the Central Government on any matter relating to pipeline.

### SCHEDULE

Mandal: Yerrupalem

District: Khammam

State: Telangana

Name of Village	Survey No.	Area		
		Hectare	Are	Square Metre
(1)	(2)	(3)	(4)	(5)
Kesireddipalli	36	00	32	25
	35	00	46	43
	40	00	48	90
	13	00	24	25
	12	00	26	61
	4	00	32	57
	5	00	04	89
	Road	00	02	06
	79	00	58	54
	58	00	33	86
	50	00	28	60
	61	00	00	69
	49	01	15	18
	63	00	04	17

[F. No. R-25011/05/2016-OR-I (Pt.)]

PAWAN KUMAR, Under Secy.

**श्रम एवं रोजगार मंत्रालय**

नई दिल्ली, 11 सितम्बर, 2017

**का.आ. 2276.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमांडेंट, केंद्रीय आयुध डिपो, जबलपुर एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/92/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.08.2017 को प्राप्त हुआ था।

[सं. एल-14012/6/2011-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

**MINISTRY OF LABOUR AND EMPLOYMENT**

New Delhi, the 11th September, 2017

**S.O. 2276.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (No. CGIT/CL/R/92/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Commandant, Central Ordnance Depot, Jabalpur and their workman, which were received by the Central Government on 31.08.2017.

[No. L-14012/6/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR****NO. CGIT/LC/R/92/2011**

Shri Devi Singh Maravi  
S/o Shri Ram Singh Maravi,  
H.No.1331, Uday Nagar, No.2, Opposite Sector-II Market,  
VFJ Estate, Jabalpur

...Workman

**Versus**

The Commandant,  
Central Ordnance Depot,  
Jabalpur

...Management

**AWARD**Passed on this 4<sup>th</sup> day of August 2017

1. As per letter dated 20-9-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-14012/6/2011-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Commandant, Central Ordnance Depot, Jabalpur in removing Shri Devi Singh Maravi, Ex-Fireman from the services vide order dated 20<sup>th</sup> November 2009 is legal and justified? What relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of Ist party is that he was working as Fireman No. 9652437 with 2<sup>nd</sup> party. Memo was issued to him dated 26-10-07 proposing to hold enquiry under Rule 14 of CCS CCA Rules. The charges alleged against workman about absence from duty during the period 26-12-06 to 16-6-07 – worked for 73 days without permission. That workman shown lack of devotion, discipline and exhibited conduct unbecoming on part of Government Servant in violation of Rule 3(1)(iii)

of CCS Conduct rules. Workman submits he was sick and was receiving treatment during above said period. Consequently he was absent from duty without prior permission that he belongs to SC community. He was ignorant about instructions contained in part I No. 1839 dated 19-12-92. That A.R.Bhakta was appointed as Enquiry Officer and OOC Francis Tete as Presenting Officer. Enquiry was conducted on various dates. After reading articles of chargesheet, Enquiry Officer asked delinquent he feels guilty of charge. On the basis of his statement, Enquiry Officer concluded the enquiry. It is reiterated that the Enquiry Officer concluded his findings without examining any documents or witnesses produced by Presenting Officer. That Enquiry Report is given in short manner cannot be sustained. That on the basis of findings of Enquiry Officer, Disciplinary Authority held him guilty of charges. Punishment of removal is imposed. That workman was not given reasonable opportunity for his defence. Enquiry was empty formality, any documents were not exhibited during enquiry proceedings. Workman was dismissed on 20-11-09. Appeal preferred by workman on 27-1-2010. Appellate Authority did not consider the deficiencies. Punishment of dismissal imposed against him is disproportionate. Appellate Authority rejected appeal. In reply to showcause notice, workman had pleaded about his sudden illness from Hepatitis. He was unable to attend duty. Workman submitted medical certificate of Dr.A.L.Gupta from said Govinda Government Hospital, Jabalpur. Enquiry Officer wrongly concluded his findings on admission of the confession. Enquiry Officer not followed Rule 14 CCS CCA pertaining to production of documents, inspection of documents and production of witnesses of prosecution. No opportunity was given to explain the circumstances against delinquent employee. Enquiry Officer did not record verdict about genuineness of medical certificate produced by workman. On such ground, workman submits that punishment of dismissal is illegal. Workman prays that the punishment of dismissal is excessive. On such ground, workman prays for setting aside order of removal/dismissal and reinstate with full backwages.

3. 2<sup>nd</sup> party filed Written statement opposing claim of workman. 2<sup>nd</sup> party submits that the workman was absent from duty from 26-12-06 to 16-6-07- 173 days without prior permission. He failed to submit application for leave within 3 days as per leave rule of 1972 and date 18-12-1992. Showcause notice was issued to workman on 19-6-07. In reply to showcause notice, workman contented that he had gone home to see his family secondly he had suffered mental problem. The explanation was not accepted. Enquiry was conducted against workman for major penalty. Shri A.R.Bhakta was appointed as Enquiry Officer and OOC Francis Tete as Presenting Officer. Notice was issued in daily Dainik Bhaskar on 31-1-08. All postal correspondence were received back. That workman had stated before Enquiry Officer that he was suffering from Hepatitis. He refused to defend case by anyone. That workman was terminated after issuing chargesheet and holding disciplinary action. Workman absented from duty. Enquiry Officer forwarded his report on 17-8-09. Punishment of removal from service was imposed on 20-11-09. It is reiterated that the workman had not submitted leave application. Punishment imposed against him is proper considering the gravity of proved misconduct for absence of 173 days. On such ground, 2<sup>nd</sup> party prays reference be answered in its favour.

4. As per order dated 15-5-17, enquiry conducted against workman is found vitiated. Management has not pleaded permission to prove misconduct. Case was fixed for argument.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman of unauthorised absence for 173 days is proved by respondents?	In Negative
(ii) Whether the punishment of removal imposed against workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order

### REASONS

6. Point No.1,2- As per order dated 15-5-2017, enquiry conducted against workman is found illegal. 2<sup>nd</sup> party management has not sought permission to prove misconduct. The record indicates that the 2<sup>nd</sup> party has not properly participated in reference proceeding. As enquiry against workman is vitiated, evidence in Enquiry Proceedings cannot be considered. When charges are not proved by independent evidence, punishment of removal imposed against workman is rendered illegal. The argument submitted by counsel for 2<sup>nd</sup> party is only reproduction of pleadings in

Written Statement. When charge of unauthorized absence is not proved, punishment of dismissal imposed against workman deserves to be set-aside. Accordingly I record my finding in Point No.2.

7. In the result, award is passed as under:-

- (1) The action of the management of Commandant, Central Ordnance Depot, Jabalpur in removing Shri Devi Singh Maravi, Ex-Fireman from the services vide order dated 20<sup>th</sup> November 2009 is not legal and proper.
- (2) 2<sup>nd</sup> party is directed to reinstate workman with continuity of service with full backwages.
- (3) Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2017

**का.आ. 2277.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार विभाग, मध्य प्रदेश सर्किल, भोपाल व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/97/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.08.2017 को प्राप्त हुआ था।

[सं. एल-40012/79/2000-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 11th September, 2017

**S.O. 2277.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (No. CGIT/CL/R/97/2000) of the Central Government Industrial Tribunal-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, Department of Telecommunication, MP Circle, Bhopal and others and their workman, which were received by the Central Government on 31.08.2017.

[No. L-40012/79/2000-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/97/2000

Shri Deepchand Sharma S/ Shri H.N.Sharma  
Vill Baisana,  
Tehsil Narsingarh,  
Raigarh (MP)

...Workman

#### Versus

Chief General Manager,  
Deptt of Telecommunication,  
Hoshangabad Road, MP Circle,  
Bhopal (MP)

Telecom District Engineer,  
Rajgarh, At Biaora,  
Raigarh (MP)

...Management

**AWARD**

Passed on this 4<sup>th</sup> day of August, 2017

1. As per letter dated 31-5-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/79/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Deepchand Sharma S/o Shri H.N.Sharma w.e.f. 4-7-96 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at page 2/1 to 2/4. Case of workman is that he was initially appointed in May 1993 in Telecom Deptt. As casual labour in different telephone exchange under control of Sub-Divisional Officer, Biaora, Distt Rajgarh. He was working to the satisfaction of his superiors. His service record was unblemished. He was continuously working till 4-7-96. He completed more than 240 days continuous service during each of the year. His services were not regularized by the department. His services were dispensed on 4-7-96 without following statutory provisions. The act of management was discriminatory, arbitrary and contrary to the principles of natural justice. That he was posted at Narsingarh Sub-Division. He was entrusted with duty of maintaining trunk line listing, recording register and battery register. He was engaged for permanent nature of work on vacant post. Termination of his service without reasons is unfair labour practice. That services should have been regularized as he has worked continuously more than 5 years. His termination without following statutory provisions amounts to illegal retrenchment in violation of Section 25 of ID Act. On such ground, workman prays for his reinstatement with backwages.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of workman. 2<sup>nd</sup> party submits that as per record available in SDO(T) Biaora office. Workman as never engaged by the management. his claim fo regularization is baseless and fabricated. Workman as engaged as casual labour for specific work and specific period. Work is finished, his services were automatically discontinued. There is no question of giving one months notice or paying retrenchment compensation. Workman not completed more than 240 days continuous service during any calendar year. That reference be decided in favour of the management.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Deepchand Sharma S/o Shri H.N.Sharma w.e.f. 4-7-96 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

**REASONS**

5. Point No.1- The term of reference pertains to legality of termination of services of workman Deepchand Sharma. Workman had filed application for production of documents on 13-7-07. Management filed reply to said application contending that workman may be directed to furnish exact dates of working with the management so management may be in position to answer subject to the working of the workman. Management was directed to file affidavit, however no such affidavit was filed. Counsel for management on 23-4-2010 submitted that he has not to file any documents. Case was then fixed for evidence of workman.

6. Management without filing affidavit not produced documents requested by the workman. In factual matrix, evidence adduced by parties deserves to be considered.

7. Workman filed affidavit of his evidence. He stated that he was working as casual labour from July 93 to April 96 in Telecom Deptt. He had completed 240 days continuous service during each of the year. His services were terminated without notice. He is unemployed. Termination of his service is in violation of Section 25 of ID Act. Seniority list was not prepared. Any chargesheet was not served to him. In his cross-examination, workman says post was not advertised, his name was not sponsored through Employment Exchange. His oral interview was taken, appointment letter was not given to him. He was doing work of trunk line , token testing, battery reading he was not given training for such work. He was paid wages for the days he had worked. Workman admits he was called for work when work was available. He denies that he not worked for more than 240 days. The tenure of cross-examination is

clear that workman was working with 2<sup>nd</sup> party. The controversy whether workman had completed 240 days continuous service workman as engaged as casual labour, no rules are pointed out for engagement of casual labours.

8. Management filed affidavit of Shri Shailendra. His affidavit is devoted on the point workman as never engaged whereas in Written statement filed by management, it is pleaded that workman was engaged as casual labour. Affidavit of witness of management is inconsistent with the pleadings in Written Statement and therefore cannot be relied. Evidence of workman is not shattered that he was not continuously working. When he was called for work, documents must be with the management. management has not produced documents despite application for production of documents. It is clear that the management is withholding the material documents. Therefore evidence of workman deserves to be accepted. Services of Ist party are terminated without notice, retrenchment compensation is not paid to him. Therefore termination of services of workman is illegal for violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

9. Point No.2- In view of my finding in Point No.1 termination of services of workman is illegal, question remains for consideration whether workman is entitled for reinstatement with backwages. Evidence of workman is clear that he worked from May 93 to July 96 for about 3 years and 2 months long back in 1996. Considering the period of working, in my considered view, compensation Rs.60,000 would be appropriate. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager, Telecom in terminating the services of Shri Deepchand Sharma S/o Shri H.N.Sharma w.e.f. 4-7-96 is not proper and legal.
- (2) 2<sup>nd</sup> party is directed to pay compensation Rs.60,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2017

**का.आ. 2278.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिवीजनल इंजीनियर, ऑप्टिकल फाइबर प्रभाग, होशंगाबाद रोड, भोपाल एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/137/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.08.2017 को प्राप्त हुआ था।

[सं. एल-40012/95/2002-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 11th September, 2017

**S.O. 2278.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (No. CGIT/LC/R/137/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Divisional Engineer, Optical Fibre Division, Hoshangabad Road, Bhopal and their workman, which were received by the Central Government on 31.08.2017.

[No. L-40012/95/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/137/2002

Shri Gopal Singh,  
S/o Shri Prabhulal  
R/o Vill Badi Gorwar,  
PO Bawsar (Jagir),  
Tehsil Ishagarh, Distt. Guna

...Workman

**Versus**

Divisional Engineer,  
Optical Fibre Division,  
Hoshangabad Road,  
Bhopal (MP)

...Management

### AWARD

Passed on this 21<sup>st</sup> day of July, 2017

1. As per letter dated 8-10-2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/95/2002-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Divisional Engineer, Optical Fibre Division, Bhopal in terminating the services of Shri Gopal Singh S/o Shri Prabhulal w.e.f. 22-6-89 is justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of Ist party is that he was appointed on 1-8-87. He was engaged in Sheopuri – Gwalior, Guna- Sheopuri in Co-axial cable project of Telecom Department. He was employed on daily wages. Identity card was issued to him. He was continuously working from 1-8-87 till 22-6-89. His services were orally terminated by Shri M.M.Singh Jr.Telecom Officer. That he had worked more than 240 days preceding termination of his service. His services were terminated without paying retrenchment compensation, one months notice or salary in lieu of notice was not paid to him before terminating his services. That oral termination of his service is unfair labour practice.

3. That he had filed case in MP High Court subsequently CAT Jabalpur. It was held that as workman was claiming relief as daily wagger CAT Jabalpur has no jurisdiction. Subsequently the dispute was raised before ALC. The matter was not settled in conciliation and dispute is referred. Workman reiterates his services are terminated in violation of Section 25-F of ID Act. After termination of his service, he is unemployed. After his termination, new employees Shiv Charan, Babu Singh, Baijnath Singh, Parmal Singh, Ramesh Chandra, Pratap and many others were engaged. He was not reemployed by the management. Termination of his service is violative of Article 14 of the constitution. On such ground, workman prays for his reinstatement with backwages.

4. After setting aside exparte order, it appears Written Statement is filed by management. 2<sup>nd</sup> party has pleaded that workman was engaged as daily rate employee on 1-8-87. Workman had left work without informing the management. He had not reported back for duty neither collected payment for the work done by him. That in first spell from 1-8-87 to 31-3-88, workman had worked for 184 days, in 2<sup>nd</sup> spell from 1-10-88 to 30-4-89- workman worked for 221 days. Subsequently workman worked till 22-6-89. There was no question of terminating his services. Workman had not completed 240 days continuous service. There was no question of paying retrenchment compensation as workman himself left service on 30-4-89. Workman himself left service. There is no question of his reinstatement. Dispute is raised after 17 years is not tenable. Claim of workman deserves to be rejected.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Divisional Engineer, Optical Fibre Division, Bhopal in terminating the services of Shri Gopal Singh S/o Shri Prabhulal w.e.f. 22-6-89 is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

### REASONS

6. The term of reference pertains to legality of termination of services of workman. Workman filed affidavit of his evidence. Workman in his affidavit of evidence states that he was appointed on 1-8-87. He was engaged at Sheopuri-Gwalior, Guna- Sheopuri section of Telecom Department in co-axial cable project. In Para-4&5 of his affidavit, workman has shown his working days. His working days are shown till 30-4-89. In his cross-examination, workman says he has studied 8<sup>th</sup> standard, the post he was engaged was advertised in newspaper. He was given appointment letter. He was doing work of digging channels. He denies that whenever work was available, he was engaged. Workman reiterates that he was continuously working. He denies that he left work himself. He denies that he completed 240 days continuous service.

7. Workman has produced copy of service card. Working days are already shown in Para 4& 5 of his affidavit. If the date of termination is pleaded in statement of claim and evidence of workman is accepted 22-6-89, his working days during preceding 12 months comes to 220 days. Workman has not completed 240 days continuous service preceding 12 months of his termination prior to 22-6-89.

8. Management filed affidavit of evidence of witness Meharban Singh. However the witness remained absent for his cross examination. His evidence could not be considered.

9. Besides above, the dispute is raised after 17 years. Legal position is rather settled that dispute raised after such long delay is not tenable. Workman has also failed to prove 240 days continuous service.

10. Advocate Rajnish Gupta for workman relies on ratio held in case between

Jasmer Singh versus State of Haryana and another reported in 2015(4)SCC-458. For violation of Section 25-F of ID Act, relief for reinstatement with full backwages was allowed as in present case, workman has not completed 240 days continuous service, violation of Section 25-F of ID Act is not established.

Therefore ratio held in the case cannot be applied to case at my hand. For above reasons, I record my finding in Point No.1 in Affirmative.

11. In the result, award is passed as under:-

- (1) The action of the management of Divisional Engineer, Optical Fibre Division, Bhopal in terminating the services of Shri Gopal Singh S/o Shri Prabhulal w.e.f. 22-6-89 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2017

**का.आ. 2279.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, ऑर्डनेन्स फैक्ट्री, खमरिया, जबलपुर एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/61/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.08.2017 को प्राप्त हुआ था।

[सं. एल-14012/74/2002-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 11th September, 2017

**S.O. 2279.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (No. CGIT/LC/R/61/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Ordnance Factory, Khamaria, Jabalpur and their workman, which were received by the Central Government on 31.08.2017.

[No. L-14012/74/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/61/2003

Shri Ayodhya Prasad,  
H.No.1891, Baldi Kori di Dafai,  
Banskar Mohalla, East Karriyapathar,  
Jabalpur

...Workman

#### Versus

General Manager,  
Ordnance Factory,  
Khamaria, Jabalpur

...Management

**AWARD**

Passed on this 11<sup>th</sup> day of July, 2017

1. As per letter dated 25-3-03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14012/74/2002/IR(DU). The dispute under reference relates to:

“Whether the action of the management of General Manager, Khamaria, Jabalpur in awarding the punishment of compulsorily retirement on the basis of chargesheet dated 29-1-2000 on Shri Ayodhya Prasad Ex.T.No.Y&E/80/62841 w.e.f. 18-9-2000 is justified? If not, to what relief the concerned workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim at Page 3/2 to 3/5. Case of Ist party workman is that he was appointed on 10-2-82. He worked with devotion. He was sick during the period May 88 to July 2001. In initial stage of his sickness, family members considered he was under influence under superstitious power. He was provided treatment from Tantrik. That he belongs to backward class. The treatment from pandas, ojhas and tantric was continued and workman got relief. Such treatment was continued during 1988 to July 2001. During above said period, he was not in his full senses. Thereafter he had approached management vide letter dated 0-7-01 and requested to supply documents w.r.t. disciplinary action taken against him. Arguments were supplied to him as per letter dated 7-8-01. Documents supplied included chargesheet, proceedings of enquiry order of punishment. He was compulsorily retired. Workman further submits he had not received chargesheet, notice of enquiry. He had challenged order of punishment filing appeal on 9-10-01. However Appellate Authority not decided his appeal. Workman reiterates that enquiry was not conducted as per CCA CCS Rules 1965. Chargesheet was not served on him. Notices of enquiry were not served on him. He was not allowed for his defence. The punishment imposed against him without application of mind is severe. On such ground, Ist party workman prays for his reinstatement with backwages.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of workman at Page 7/1 to 7/8. 2<sup>nd</sup> party management submits that workman was employed as carpenter in Ordnance Factory, Khamaria. Complaints dated 20-12-98, 4-12-99 were received. Chargesheet was issued to workman under Rule 14 of CCS CCA Rules. Ist party workman had absented from duty from 3-6-90 to 25-12-98 without any leave or notice. It amounted to gross misconduct. Letters were sent by RPAD on his address mentioned in service book was received back undelivered. After issuing chargesheet dated 19-4-00, Shri R.M.Recriwal was appointed as Enquiry Officer, Shri Guljar Singh as Presenting Officer. Enquiry was conducted on 16-5-00, 29-5-00, 15-6-00, 16-6-00. Statements of management's witnesses were recorded. Enquiry was conducted in absence of workman. Defence counsel was also not present in enquiry. Enquiry was conducted exparte. Enquiry Officer submitted his report on 6-6-00 holding workman guilty of the charges. Enquiry Report was sent by registered post on his address. Disciplinary Authority considering the report of Enquiry Officer imposed punishment of compulsory retirement as per the rules.

4. Management further submits that absenteeism of employees erodes the very potentiality, credibility and productivity of any company or establishment. Punishment imposed by management is proper and legal. In parawise reply, it is reiterated that the workman was unauthorisely absent during 3-6-98 to 21-12-98. After conducting enquiry, charges were found proved by Enquiry Officer. Punishment of compulsory retirement is proper. 2<sup>nd</sup> party management prays for rejection of claim.

5. Workman filed rejoinder reiterating contentions in statement of claim. He further submitted that registered notice sent by management were never received by him. Punishment of compulsory retirement is imposed on report by Enquiry Officer that enquiry was conducted exparte. He did not get opportunity for his defence. Punishment is harsh.

6. As per order dated 8-8-13, enquiry conducted against workman is found legal.

7. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charge of unauthorized absence of workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of compulsory retirement against workman is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

**REASONS**

8. The term of reference pertains to legality of punishment of compulsory retirement imposed against workman. Chargesheet was issued to workman for unauthorized absence from 3-6-98 to 25-12-98. The chargesheet is produced along with record of enquiry at Page 7. As the order on preliminary issue is found legal, said order is not challenged, the order is binding. Statement of management's witness Shri N.M.Sheikh shows workman was absent from duty from 3-6-98. Any application for leave was not received from workman. After 28-2-98, workman had not attended duty. Statement of management witness Vishram corroborates evidence of witness No.1 that workman was absent from duty from 3-6-98 to 25-12-98. Enquiry Report is submitted at Page 23 holding workman guilty. Findings of Enquiry Officer are supported by evidence of management's witnesses as discussed above. Learned counsel for Ist party Shri Vijay Tripathi submits during course of argument, notices were sent to workman on incomplete address. Notices were not sent on his residential address, those argument can not be considered at this stage as the enquiry conducted against workman is found legal vide order dated 8-8-13.

9. Learned counsel for 2<sup>nd</sup> party Shri A.K.Shashi relies on ratio held in case between-

State Bank of India and others versus Ramesh Dinkar Punde reported in 2006(7)SCC-212. Their Lordship dealing with scope of judicial review in the matter of services and departmental enquiry held that evidence considered by Disciplinary Authority and Appellate Authority- reappraisal is impermissible.

Reliance is also placed on ratio held in case between Commissioner of Police versus Jayasurian and another reported in 1997(6)SCC-75. Their Lordship dealing with Enquiry Report and alleged inconsistency and unreliable evidence held that there was no infirmity in approach of the competent authority in appreciation of evidence adduced in the enquiry. The Tribunal in exercise of power of judicial review was not justified in interfering with the finding of competent authority.

In case of State of Tamil Nadu versus Thiru K.V.Perumal and others reported in 1996(5)SCC-474. Their Lordship dealing with scope of judicial review held question as to whether charges were established on the material available is beyond the scope of judicial review.

10. Evidence of management's witness proves charge of unauthorized absence against workman. For above reasons, I record my finding in Point No.1 in Affirmative.

11. Point No.2- In chargesheet, workman was shown absent from duty during the period 3-6-98 to 25-12-98, 1-1-99 till date of chargesheet 21-1-2000. Charges alleged against workman are proved from evidence in Enquiry Proceedings. Period of absence is more than 2 years. The punishment of compulsory retirement imposed against workman cannot be said disproportionate. I hold that no interference is required in punishment of compulsory retirement imposed on workman.

12. In the result, award is passed as under:-

- (1) The action of the management of General Manager, Khamaria, Jabalpur in awarding the punishment of compulsorily retirement on the basis of chargesheet dated 29-1-2000 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2017

**का.आ. 2280.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार विभाग, मध्य प्रदेश सर्किल, भोपाल एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/ आर/36/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.08.2017 को प्राप्त हुआ था।

[सं. एल-40012/300/99-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 11th September, 2017

**S.O. 2280.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (No. CGIT/LC/R/36/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to

the Chief General Manager, Department of Telecommunication, MP Circle, Bhopal and their workman, which were received by the Central Government on 31.08.2017.

[No. L-40012/300/99-IR (DU)]

RAJENDRA JOSHI, Dy. Director

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/36/2000

Shri Sattar Khan  
S/o Yusuf Khan  
Vill Akodia,  
Shajapur Distt.

...Workman

### Versus

Chief General Manager,  
Deptt. of Telecommunication  
Hoshangabad Road, MP Circle,  
Bhopal(MP)

...Management

### AWARD

Passed on this 24<sup>th</sup> day of July, 2017

1. As per letter dated 27-1-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-40012/300/99/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Sattar Khan S/o Shri Yusuf Khan w.e.f. 4-3-99 is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Statement of claim is filed at Page 4. Case of workman is that he was in continuous services of 2<sup>nd</sup> party DET, Shajapur. He worked continuously more than 240 days preceding termination of his services. He was not paid retrenchment compensation prior to the termination of his service. 2<sup>nd</sup> party management not obtained prior permission for his retrenchment as per Rule-74. On such ground, workman prays for his reinstatement with backwages.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of workman. 2<sup>nd</sup> party contends that workman was not appointed as casual labour during 1988. Workman was not working in sub division. There was no question of paying allowance on regularization of his service. That workman never worked in the Division. There was no question of termination of his service. That no question arise for terminating services of workman in violation of Section 25-F of ID Act. Workman had not worked more than 240 days in any calendar years. There was no question of paying retrenchment compensation to him. 2<sup>nd</sup> party prays for rejection of claim.

4. Ist party workman filed rejoinder reiterating contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Sattar Khan S/o Shri Yusuf Khan w.e.f. 4-3-99 is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

### REASONS

6. The term of reference pertains to legality of termination of services of workman. Workman filed affidavit of his evidence claiming that he was working in the department from 2-1-87 to 1999 at SDO(T) Sujalpur. Management has

framed scheme giving temporary status to casual employees working during 30-3-85 to 22-6-88. That his services were terminated in February 99 without giving benefit of the scheme. In his cross examination, workman says he has studied Vth standard, post was not advertised. His name was not sponsored through Employment Exchange, appointment letter was not received by him. He denies that he did not work in the department. He denied that affidavit of his evidence is false.

7. Management's witness Shri S.D.Kulkarni filed affidavit of his evidence. Witness of the management has stated that claim of workman for regularization is preavalous and not tenable. Workman is not entitled for regularization. Affidavit is filed in complete contravention of the terms of reference. Term of reference pertains to termination and not regularization. Evidence of management's witness is absolutely not supporting claim of workman. Workman had filed application for production of documents on 26-3-03.

8. Management's witness Diwkar Jain filed affidavit that workman was never engaged. Therefore filing of application for production of documents cannot help claim of workman. Evidence of workman cannot establish that he was working more than 240 days preceding 12 months of his termination. Workman is not entitled to protection of Section 25-F of ID Act. Therefore I record my finding in Point No.1 in Affirmative.

9. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager, Telecom in terminating the services of Shri Sattar Khan S/o Shri Yusuf Khan w.e.f. 4-3-99 is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2017

**का.आ. 2281.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार विभाग, मध्य प्रदेश सर्किल, भोपाल एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/338/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.08.2017 को प्राप्त हुआ था।

[सं. एल-40012/277/99-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 11th September, 2017

**S.O. 2281.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (No. CGIT/LC/R/338/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, Department of Telecommunication, MP Circle, Bhopal and their workman, which were received by the Central Government on 31.08.2017.

[No. L-40012/277/99-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/338/99

Shri Lalsingh S/o Shri Padamsingh,  
Vill Nenavath,  
Tehsil Tarana,  
Distt. Ujjain

...Workman

#### Versus

Chief General Manager,  
Deptt. of Telecommunication,  
Hoshangabad Road,  
MP Circle, Bhopal (MP)

...Management

**AWARD**

Passed on this 24<sup>th</sup> day of July, 2017

1. As per letter dated 19-11-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-40012/277/99/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager Telecom and their workman Shri Lalsingh S/o Padam Singh w.e.f. 26-3-99 is legal and justified? If not, to what relief he is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim at Page 16. Case of workman is that he was employed as casual mazdoor against clear vacancy in 2<sup>nd</sup> party, BSNL during January 1983 to March 1990. His services were terminated violating due process of law. His termination amounts to retrenchment. He was not paid retrenchment compensation prior to termination of his services. Principle enumerated under Section 25 G,H of ID Act were not followed. Workman was not given benefit of temporary status as per scheme available in the industry. That junior employees were retained in service. Workman was terminated. On such ground, workman prays for his reinstatement with backwages.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of workman. 2<sup>nd</sup> party reiterates workman was not engaged or appointed as casual labour from 1987. It is denied that he was working in the sub division. No question of paying allowance arise as workman was not engaged. There is no question of his regularization. Workman not worked for 240 days in any calendar year. His termination does not arise, payment of retrenchment compensation does not arise. 2<sup>nd</sup> party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief General Manager Telecom and their workman Shri Lalsingh S/o Padam Singh w.e.f. 26-3-99 is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

**REASONS**

5. The term of reference is not clear whether it pertains to denial of regularization or termination of services of workman. Considering pleadings between parties, it appears that term of reference pertains to termination of workman. Affidavit of evidence is filed by workman. Workman has stated that he was continuously working in the department from March 1987 to March 1999. His services were terminated without notice, retrenchment compensation was not paid to him. In his cross examination, workman says he signed on affidavit of his evidence on say of his counsel. He claims ignorance what is written in affidavit of evidence. He was not given appointment letter. His oral or written test was not conducted. He denies that he was not working in BSNL.

6. Evidence of management’s witness Shri H.D.Kulkarni is filed supporting contentions in Written Statement that workman was never engaged. He did not work more than 240 days during any of the year. Cross examination of management’s witness shows he had seen record in SDO office of period 1983 to 1990. Record of 700-800 employees were checked by him. He did not find record of workman. Evidence of workman is not corroborated by any documents, any co-worker is not examined. Workman has failed to establish more than 240 days continuous working. He is not entitled to protection of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager Telecom and their workman Shri Lalsingh S/o Padam Singh w.e.f. 26-3-99 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2017

**का.आ. 2282.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, ऑर्डनेन्स फैक्ट्री, खमरिया, जबलपुर एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/55/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.08.2017 को प्राप्त हुआ था।

[सं. एल-14012/72/2000-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 11th September, 2017

**S.O. 2282.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (No. CGIT/LC/R/55/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Ordnance Factory, Khamaria, Jabalpur and their workman, which were received by the Central Government on 31.08.2017.

[No. L-14012/72/2000-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR****NO. CGIT/LC/R/55/2001**

Shri Sunil Kumar Shrivastava,  
General Secretary, Ordnance Labour Union,  
Khamaria, 10/2, Hospital Quarters,  
Khamaria, Jabalpur

...Workman/Union

**Versus**

General Manager,  
Ordnance Factory, Khamaria,  
Jabalpur

...Management

**AWARD**Passed on this 28<sup>th</sup> day of July, 2017

1. As per letter dated 9-2-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-14012/72/2000-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Ordnance Factory, Khamaria, Jabalpur (MP) in compulsory retiring Shri Bharat Kumar, MS/299/Yard w.e.f. 19-11-99 is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/5. Case of Ist party workman is that he was working as male sweeper with 2<sup>nd</sup> party management. His service record was unblemished. Chargesheet was issued to him on 6-2-95 under of CCS CCA-Rule 14. Charges alleged against him were availing leave in afternoon without prior sanction and unauthorized entry in office of Assistant Foreman and misbehaving, abusing with sr.staff, consuming alcohol on duty hours and act unbecoming on behalf of Government servant. Ist party workman submits that he has not committed alleged misconduct. On 30-4-94, he had applied for half day leave. For said purpose, he had gone to Y & E Section for submitting application. That Mr. Gangopadhyay misbehaved with him. He was abused in filthy language. Workman explained that he had come for leave application and he has right for going office for official work. That Mr. Gangopadhyay attached him with grass cutter causing injury to him. He reported said incident to police. Shri Gangopadhyay and J.P.Agrawal were prosecuted on chargesheet for offence under Section 294, 324 IPC. Both were convicted in criminal case No. 738/94 by Judicial Magistrate C.P.Verma. workman reiterates that Gangopadhyay had assaulted him. Instead of taking action against Gangopadhyay, chargesheet was issued to him on false complaint. He submitted reply to chargesheet denying charges

alleged against him. Enquiry was conducted against him and punishment of compulsory retirement was imposed. Appeal preferred by him was rejected. That chargesheet issued to him was vague. Specific misconduct was not alleged against him. Enquiry was not conducted following principles of natural justice. Enquiry Officer asked leading question to the witness of the prosecution. He was not allowed co-worker of a choice. Cross examination of management's witness was not allowed. Statements of management's witnesses before Enquiry Officer were not supplied to him. It is reiterated that he was not given full opportunity for his defence. He could not examine witnesses of his defence. It is submitted that punishment of compulsory retirement imposed against him is illegal. Charges are not proved. On such ground, workman prays for his reinstatement with backwages.

3. 2<sup>nd</sup> party management filed Written Statement at Page 6/1 to 6/13 opposing claim of workman. 2<sup>nd</sup> party submits that it is engaged in production of ammunition for armed forces as such discharged sovereign functions of the Government, it is not covered as industry in view of Bangalore Water Supply case. Management submits that chargesheet was issued to 1st party workman under Rule 14 of CCS CCA. Charge against workman was on 30-4-94, he had entered E&Y Section. He misbehaved with Gangopadhyay, manhandled him, abused in filthy language. After message was received on telephone, security persons rush to the place and recorded statements. GRC Panikar, O.P.Yadav, Nair, R.S.Tiwari had assembled at the place of occurrence. Gangopadhyay had narrated details of the incident. Shri S.C.Khanojia was appointed as Enquiry Officer and Bhattacharya was Presenting Officer. Enquiry was conducted on various dates, details given in para 13 of the Written Statement. Enquiry Officer submitted his report holding that charges against workman were proved. Considering the report of Enquiry Officer, punishment of compulsory retirement was imposed. Appeal preferred by workman was rejected. It is denied that enquiry was conducted in violation of principles of natural justice, it is denied that workman was not allowed opportunity for his defence. It is also denied that management's witnesses were not allowed to be cross examined. 2<sup>nd</sup> party management reiterates that for proved charges of serious nature, punishment of compulsory retirement imposed against workman is proper and legal. Workman is not entitled to any relief.

4. 1st party filed rejoinder at Page 8/1 to 8/2 reiterating his contentions in statement of claim.

5. As per order dated 23-7-5, enquiry conducted against workman is found proper and legal.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charges alleged against workman is proved from evidence in Enquiry proceedings?	Charge No.2,4 & 5 are proved against workman.
(ii) Whether the punishment of compulsory retirement imposed against workman is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief

### REASONS

7. Point No.1- As per order dated 23-7-15, enquiry conducted against workman is found proper and legal. Question remains for consideration whether charges alleged against workman are proved. Said point needs to be decided on the basis of evidence in Enquiry Proceedings. Charge No. 1 availing leave in afternoon without prior sanction. Availing leave in the afternoon doesnot contemplate prior sanction and rule is brought to my notice that such act can constitute misconduct. Though leave is not a right but submitting leave application cannot be said misconduct. So far as the main charge pertains to workman entering in drunken condition in E&Y office, abusing assaulting. Statement of management's witness Israr Ahmed is that he was on duty in Yard. Workman had come to office and asked for leave form. When he was giving leave form, Gangopadhyay said how workman entered office without his permission. When Gangopadhyay tried to call security giving call on telephone, 1st party workman had abused him in name of his mother, sister, manhandled him and left the office. Statement of Israr Ahmed is silent about drunken condition of workman. Management's witness Gangopadhyay had fully supported management about the incident. His evidence is corroborated by witness J.P.Agrawal. Workman had abused in filthy language and also pulled down Gangopadhyay and left the office. Statement of J.P.Agrawal is silent about drunken condition of workman. Statement of Gangopadhyay is not clear that workman had entered office in drunken conditions. His statement is devoted only on the point workman had entered office concealing his presence. He was abused and manhandled. Charge of drunkenness cannot be established from evidence of Enquiry Proceedings. As such Charge No.1 & 3 cannot be proved from

evidence in Enquiry Proceedings. Charge of unauthorized entry and misbehaving with the superior officers, mandling and act unbecoming of Government Servant are established from evidence in Enquiry Proceedings.

8. Ist party has also produced copy of judgment in criminal case. Shri Jagdish Prasad Agrawal and Ashok Gangopadhyay were convicted for offence under Section 294, 324, 323 IPC and sentenced to six months fine. During course of argument, it was however submitted that both of them were acquitted by Hon'ble High Court. The conviction of J.P.Agrawal and Ashok Gangopadhyay cannot be ground for exonerating workman in present case. For the reasons discussed above, I record my finding in Point No.1 that all charges except Charge No.1 & 3 are proved.

9. Point No.2- In view of my finding in Point No.1 that all charges except Charge No.1 & 3 are proved, question remains for decision whether the punishment of compulsory retirement imposed against workman is proved. The proved charge against Ist party workman pertains to abusing superior officer in filthy language, pulling him, manhandling him is certainly serious misconduct.

10. Shri A.K.Shashi for management on the point relies on ratio held in case between-

West Bokaro Colliery versus Ram Pravesh Singh reported in 2009-I-LLJ-220(SC). Their Lordship dealing with Section 11-A of ID Act Industrial Tribunal setting aside dismissal of workman, interference by Tribunal with findings in domestic enquiry not warranted. Standard of proof in departmental proceedings different from that in criminal case.

In present case from evidence on record, Charge No. 2, 4 & 5 are proved. Charge No. & 3 are not proved, punishment of compulsory retirement cannot be said shockingly disproportionate. Considering the evidence on record, I do not find reason to interfere in the punishment of compulsory retirement, Point No.2 is answered in Affirmative.

11. In the result, award is passed as under:-

- (1) The action of the management of Ordnance Factory, Khamaria, Jabalpur (MP) in compulsory retiring Shri Bharat Kumar, MS/299/Yard w.e.f. 19-11-99 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2017

**का.आ. 2283.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, ऑर्डनेन्स फैक्ट्री, खमरिया, जबलपुर एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/56/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.08.2017 को प्राप्त हुआ था।

[सं. एल-14012/73/2002-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 11th September, 2017

**S.O. 2283.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (No. CGIT/LC/R/56/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Ordnance Factory, Khamaria, Jabalpur and their workman, which were received by the Central Government on 31.08.2017.

[No. L-14012/73/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR**

**NO. CGIT/LC/R/56/2003**

Shri Emmanuel,  
Ex.T.No.ME/03/65056, Ranital,  
Sarwodya Nagar,  
Marghatia Road, PO Gandhiganj,  
Jabalpur

...Workman

**Versus**

General Manager,  
Ordnance Factory,  
Khamaria, Jabalpur

...Management

**AWARD**

Passed on this 20<sup>th</sup> day of July, 2017

1. As per letter dated 21-3-03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-14012/73/2002-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Ordnance Factory, Khamaria, Jabalpur in awarding the punishment of compulsory retirement on the basis of chargesheet dated 29-5-2001 on Shri Emmanuel T.No.ME/03/65056 w.e.f. 18-1-2002 is justified? If not, to what relief the concerned workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 7 to 11. Case of Ist party workman is that he was working as labour in Ordnance Factory, Khamaria. He was suffering from illness during 1995 to May 2001. He was receiving treatment from Doctors for his illness. He had informed management about his illness along with medical certificates. Management had sent him for medical examination by Principal, Medical Officer of the factory. Chargesheet was issued to him on 7-5-99 for unauthorized absence for the period 18-1-99 to 29-3-99. On 17-8-99, he had submitted representation requesting certain documents for filing reply to chargesheet. Workman had explained compelling reasons for his absence from duty and requested to drop charges against him. That his mental condition was not proper, he was not in position to defend effectively. Enquiry Officer conducted exparte enquiry. That he was not given opportunity to cross examine witnesses of prosecution. He was not allowed opportunity to examine defence witnesses. He was not informed for submitting defence. Enquiry Report was received by him along with letter dated 10-4-2001. In his reply, workman had reiterated that he was mentally disturbed and unable to defend himself. That punishment of compulsory retirement imposed against him without considering his defence. That appeal preferred by him was not decided by the authority. Enquiry Officer recorded his report ipse-dixit. Workman reiterates that he was not given opportunity for his defence. Punishment imposed against him is extremely harsh and disproportionate. On such ground, he prays for his reinstatement with backwages.

3. Management filed Written Statement opposing claim of workman. 2<sup>nd</sup> party submits that workman was issued chargesheet under Rule 14 of CCS CCA rules for unauthorized absence from 18-1-99 to 29-3-99. Workman was alleged to be habitual absentee. The act on part of workman is unbecoming. Names of witnesses were given in the chargesheet itself. That punishment of stoppage of increment for one year was imposed against workman for unauthorised absence in 1996. Workman was warned for unauthorized absence in the year 1995. That workman did not submit reply to chargesheet. Shri R.B.Tripathi was appointed Enquiry Officer, Shri A.K.Choudhary was appointed as Presenting Officer. Workman and his Defence Assistant not participated in the enquiry. Despite repeated opportunities given to them, enquiry was proceeded exparte. Enquiry was held on various dates, details given in Para-6 of the Written Statement. Management's witness examined witnesses Shri T.R.Singh and Shri S.S.Kapoor. documentary evidence was produced. Charges against workman are proved. Enquiry Officer submitted his report holding charges against workman are proved. Disciplinary Authority agreed with the findings of Enquiry Officer and imposed punishment of compulsory retirement. The appeal preferred by workman dated 14-7-01 was forwarded to Appellate Authority. Workman had taken ground in appeal that he was not allowed opportunity for defence. The copies of Enquiry Proceedings were not supplied to him. Management reiterate that workman was given opportunity but he did not participate. Principles of natural justice were followed. Considering gravity of proved charges, punishment of compulsory retirement is proper. Above contentions are reiterated in parawise reply given in the Written Statement. That copy of Enquiry Report was forwarded to workman. He submitted his reply to Enquiry Report and explained that due to sickness he could not attend his duty. Workman did not cooperate in Enquiry Proceedings. The Appellate Authority found appeal without merit, any procedural irregularity was not committed. Appeal was rejected on 29-7-02. 2<sup>nd</sup> party submits that workman is not entitled to any relief.

4. Ist party workman filed rejoinder reiterating contentions in statement of claim.

5. As per order dated 16-2-2017, enquiry held against workman is found legal and proper.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	Only charge No.1 is proved.
(ii) Whether the punishment of compulsory retirement imposed against workman is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

7. Point No.1- Enquiry conducted against workman is found legal as per order dated 16-2-2017. Whether charges of unauthorized and habitual absence against workman are proved or not needs to be decided from evidence in Enquiry Proceedings. Exhibit M-7 is Enquiry Report finds clear reference of charges against workman for absence from 18-1-98 to 29-3-99. That workman was found habitual absent. Evidence of management's witness T.R.Singh in enquiry is clear that workman was absent from 18-1-99 to 30-3-99. In Attendance Register, endorsement in Letter "B" was made for the period 18-1-99 to 3-4-99 meaning that workman was absent without intimation. for the period 1-2-99 to 29-3-99, endorsement in Attendance Register was made "D" mentioning workman was absent without prior intimation. witness of management was cross examined by Defence Assistant. In his cross-examination, management's witness says that he sent report about the absence of workman to vigilance. Workman in his further cross examination says his report is in the section, he had not brought with him. copy of muster roll was produced in enquiry dated 9-3-00. Witness of management was not further cross examined. Witness No.2 S.S.Kapoor examined in enquiry says that workman had not given intimation about his absence from duty during the period 18-1-99 to 29-3-99. Any such intimation was not received by post. Management witness produced report Form No.43 regarding absence of the workman. The evidence on record proved Charge No.1. management has not produced documents about earlier absence of workman and punishment against him as pleaded in Written Statement. Therefore Charge No.2 alleged against workman is not proved.

8. Point No.2- In view of my finding in Point No.1 Charge No.1 is proved against workman, Charge No.2 pertaining to habitual absence is not proved. Question remains for consideration is whether punishment of compulsory retirement against workman is proper and legal. The proved unauthorized absence is for about one year and 2 months which cannot be said a short period. Workman had died during pendency of reference. Shri R.K.Soni for deceased workman submits that LR's of deceased workman are not brought on record, unauthorized absence is for short period. There is no evidence of punishment for previous absent. Punishment of compulsory retirement is harsh, punishment be modified to imposing punishment withholding 2-3 increments.

9. Shri A.K.Shashi for management reiterates that the workman was habitual absent. Punishment of compulsory retirement doesnot call for interference. Shri A.K.Shashi relies on ratio held in case between-

State Bank of India and others versus Narendra Kumar Pandey reported in 2013(2)SCC-740. Their Lordship held the dismissal order passed by Enquiring Authority after full fledged enquiry in compliance with Service rules, where charges against delinquent officer were found to be proved was justified. High Court erred in interfering with dismissal.

As facts of present case are not comparable, ratio cannot be applied to case at hand. Workman is dead. Considering period of long absence, I donot find appropriate to interfere in the punishment of compulsory retirement. Even punishment of withholding increments if imposed, as workman is dead, such punishment cannot be implemented therefore I record my finding in Point No.2 in Affirmative.

10. In the result, award is passed as under:-

- (1) The action of the management of Ordnance Factory, Khamaria, Jabalpur in awarding the punishment of compulsory retirement on the basis of chargesheet dated 29-5-2001 on Shri Emmanuel T.No.ME/03/65056 w.e.f. 18-1-2002 is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2017

**का.आ. 2284.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य अधिकारी, पोस्ट अधिकारी, रायगढ़ डिविजनल, रायगढ़, छत्तीसगढ़ एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/102/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.08.2017 को प्राप्त हुआ था।

[सं. एल-40011/11/2012-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 11th September, 2017

**S.O. 2284.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (No. CGIT/LC/R/102/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Chief Superintendent of Post Offices, Raigarh Divisional, Raigarh, Chhattisgarh and their workman, which were received by the Central Government on 31.08.2017.

[No. L-40011/11/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/102/2012**

Shri R.D.Haripriya Divisional Secretary,  
National Union of Postal Employees Group "C",  
Chhattisgarh Raigarh Division, Head Post Office,  
Raigarh (Chhattisgarh)

...Workman/Union

#### Versus

Chief Superintendent of Post Offices,  
Raigarh Divisional,  
Raigarh (Chhattisgarh)

...Management

#### AWARD

Passed on this 10<sup>th</sup> day of August, 2017

1. As per letter dated 9-10-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-40011/11/2012-IR(DU). The dispute under reference relates to:

“Whether the action of the management of the Chief Post Master General, Chhattisgarh Circle, Raipur (CG) & the Chief Superintendent of Post Offices, Raigarh Divisional Raigarh, Distt. Raigarh (CG) in engaging and continuing of Shri Subhash Singh Malakar as Driver on daily wage basis for the years together (i.e. 28-7-93 onwards till date) and depriving him of the status and privilege of permanent employee is legal proper and justified? If not, what relief the said workman is entitled to and from which date?”

2. After issuing reference notices were issued to the parties. Ist party submitted statement of claim. Case of Ist party workman is that he was appointed as daily wage worker from 28-7-73 in clear vacant post. He is continuously working as inspection jeep. He holds valid licence for heavy vehicles. He possess requisite qualification for post of Driver. He is satisfactorily working since his engagement. Though he is doing work of regular nature, he deprived benefits of regular employee. On such ground, workman prays for regularization of his services.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of workman. 2<sup>nd</sup> party submits that one post of driver is sanctioned for office of Suptd., Post Office, Po Raigarh for inspection vehicle. One Tribhuwan Singh was working as jeep driver who was compulsorily retired on 7-4-95. After his retirement, the post is lying vacant. The inspection vehicle is being driven by outsider jeep driver on daily wages. Workman Subhash Malkar has been working on outsider

jeep driver on daily wages in said vacant post. Daily wages as per minimum rates fixed and admissible DA is paid to the workman. That he doesnot fulfill eligibility norms prescribed by the department. Workman holds valid licence for light four wheeler vehicles but he doesnot fulfill eligibility for post of Driver. The dispute was raised before ALC has been referred to this Tribunal. Above contentions are reiterated in parawise reply also that the workman was working as outside jeep driver on daily wage basis. He holds valid driving licence. That he fulfills requirement of educational qualifications but has crossed prescribed age limit. Workman is working on daily wage basis temporarily. Recruitment to the post to be made following instructions received from the department. Workman's name was not sponsored through Employment Exchange. Workman is not fulfilling criteria of upper age limit. On such ground, 2<sup>nd</sup> party prays that claim of workman cannot be accepted.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of the Chief Post Master General, Chhattisgarh Circle, Raipur (CG) & the Chief Superintendent of Post Offices, Raigarh Divisional Raigarh, Distt. Raigarh (CG) in engaging and continuing of Shri Subhash Singh Malakar as Driver on daily wage basis for the years together (i.e. 28-7-93 onwards till date) and depriving him of the status and privilege of permanent employee is legal proper and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

### REASONS

5. Point No.1- The term of reference pertains to legality of denial of regular status of workman. Workman has filed affidavit of his evidence supporting his claim that he was appointed in vacant post on daily wages on 28-7-93. That during course of his services, his juniors were regularized, he was left out. That his services were orally terminated on 13-5-13 during pendency of reference. That he was continuously working since his initial appointment till termination of his service. In his cross, workman says his name was not sponsored through Employment Exchange., he was paid for his actual working days. He was engaged as per exigency of work.

6. Management's witness Shri D.K.Panda filed affidavit of his evidence. Management's witness in his affidavit also says one post of jeep driver for inspection vehicle is sanctioned. That after compulsory retirement of Tribhuwan Singh, said jeep is driver by outsider on daily wages. Workman Subhash Malkar is engaged as outsider on daily wages when ever his services were required, his name was not sponsored through Employment Exchange. That workman holds driving licence but he doesnot fulfill eligibility for appointment to the post. That workman not completed 240 days continuous service. He was called for working on daily wages but not appointed as regular drivers. In his cross, management's witness says he is working in office of Supt of Post from 14-2-2017. He claims ignorance that workman was working as Driver in said office from 1993. Post of driver was lying vacant. He claims ignorance about appointment made in the department on 14-2-17. He has not seen service record of the workman.

7. Documents produced by Ist party Exhibit W-1 experience certificate shows that workman was working on daily wages on inspection vehicle since 28-7-93, certificate was issued on 27-12-02. Exhibit W-2 workamn was paid on daily wages, document is dated 23-8-93. In Exhibit W-3 payment on daily wage basis is made to workman on 3-9-93, Exhibit W-4 is representation submitted by workman dated 21-4-08, Exhibit W-5,6 are letters given by workman. Exhibit W-7 payment of daily wages to workman on 23-8-93. W-8 payment of daily wages paid to workman on 3-9-93. Exhibit W-9 is payment of daily wages to the workman on 5-2-96, W-10 is payment made on 11-3-96, W-11 is payment made to workman on 2-4-96, W-12 is payment made on 1-5-96, W-13 is payment made on 3-6-96, W-14 is payment made on 1-7-96, W-15 is payment made on 1-8-96, W-16 is payment made on 3-9-96, W-17 is payment made on 4-10-96, W-18 is payment made on 4-11-96, W-19 is payment made on 2-12-96, W-20 is payment made on 2-1-97. Exhibit W-21 is application submitted by workman to ALC. From above documents, it is clear that workman was engaged on daily wages since 1993 and continued on daily wages till his termination in the year 2013. Management has not produced documents about working days of workman. Witness of management has no personal knowledge.

8. Shri R.C.Shrivastava for workman relies on ratio held in case between

Oil and Natural Gas Corporation Limited versus Petroleum Coal Labour Union and others reported in 2015(6)SCC-494. Their Lordship considering clause 2(ii) of the standing orders of ONGC. Temporary employees concerned appointed directly by corporation on monthly salary basis completed 240 days of service in a calendar year were regularized.

In present case, workman is engaged on daily wages since 1993 for years together without regularizing his services amounts to unfair labour practice.

9. On the point learned counsel for 2<sup>nd</sup> party Shri R.K.Soni relies on ratio held in case between

Secretary, State of Karnataka and others versus Umadevi and others reported in AIR-2006-SC-1806. Their Lordship held regularization of daily wage contractual employees appointed in violation of constitutional scheme would not extend to directing regularization as in permanent service.

In Umadevi's case cited above, question of unfair labour practice under Vth Schedule Item 10 has not been considered. Though the term of reference pertains to claim for regularization, services of Ist party workmen are terminated during pendency of reference without obtaining permission or approval of this Tribunal is void for violation of Section 33(2)(b) of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

10. Point No.2- In view of my finding in Point No.1, action of the management denying regularization in service is illegal. The services of workman are terminated on 3-5-13 during pendency of reference without obtaining permission or approval of this Tribunal under Section 33(2)(b) of ID Act. The termination of services of Ist party is illegal and void. Workman in his affidavit of evidence has stated that he is unemployed, management has not adduced evidence about workman is in gainful employment. Therefore workman is entitled for regularization/ reinstatement in service with full backwages. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of the management in not regularizing services of workman is illegal.
- (2) Termination of service of workman on 13-5-13 during pendency of reference is illegal.
- (3) 2<sup>nd</sup> party is directed to reinstate workman with continuity of service and full backwages and give him benefit of regularization on post of Driver.
- (4) Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2017

**का.आ. 2285.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमांडेंट, केंद्रीय आयुध डिपो, जबलपुर एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/24/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.08.2017 को प्राप्त हुआ था।

[सं. एल-14012/30/93-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 11th September, 2017

**S.O. 2285.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (No. CGIT/LC/R/24/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Gun Carriage Factory, Jabalpur and their workman, which were received by the Central Government on 31.08.2017.

[No. L-14012/30/93-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR****NO. CGIT/LC/R/24/2007**

Shri Sudesh Kumar  
S/o Shri Late Vijay Singh through  
Harrison Stephen, Bunglow No.52,  
Narmada Road,  
Jabalpur

...Workman

**Versus**

General Manager,  
Gun Carriage Factory,  
Jabalpur

...Management

**AWARD**Passed on this 8<sup>th</sup> day of August, 2017

1. As per letter dated 2-1-2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14012/30/93-IR(DU) dated 25-1-07 The dispute under reference relates to:

“Whether the action of the management of General Manager, Gun Carriage Factory Jabalpur in terminating the services of their workman Shri Sudesh Kumar w.e.f. 30-11-85 is legal and justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim. Case of Ist party workman is that he was appointed as messenger boy in 1984 on compassionate basis vide order dated 11-9-84. He worked honestly. His services were no longer required. That management alleged that he was unauthorized absent for 84 days without prior intimation. Workman submits he had informed authority about his illness. He has not inquired management, did not know about illness of workman. Termination order was passed without giving proper opportunity. That he worked more than 240 days in a calendar year. While terminating his services, provisions of ID Act were not followed. He raised his grievances through SC ST Welfare Association but he did not get any result. The request for reinstatement was not considered. That he was suffering from illness, he was mentally not well. He had received treatment of his illness. The intimation was given to management through his relatives was ignored. Management did not try to find out his position, termination order was passed exparte without issuing showcause notice, no enquiry was conducted. Termination of his service is in violation of natural justice. Due to sickness and financial difficulties, he could not seek legal advice for the remedies. That only after he filed Writ Petition 2530/97, Hon'ble High Court had issued direction, the dispute has been referred. It is alleged that management terminating his services on ground that his services were no longer required has intentionally caused harassment to him. It is reiterated that his services are terminated in violation of Section 25-F of ID Act, Article 21 of the constitution. On such ground, workman prays for his reinstatement with consequential benefits.

3. Workman was proceeded exparte. Prior to it, management filed Written Statement. Case of 2<sup>nd</sup> party management is that Ist party workman was proceeded exparte as he failed to file Written Statement. That the appointment of workman was on probation for a period of 2 years after completion of probation period, his services were to be treated temporary in nature. General Manager of 2<sup>nd</sup> party was obtained to terminate his services. During probation of one year period, attendance of workman was irregular, workman was frequently absent without prior sanctioned leave. Workman was unauthorisely absent for 84 days. Considering period of unauthorized absence, showcause notice was issued to workman. Since appointment was temporary in nature, considering irregular attendance, his services were terminated vide order dated 30-11-85. Workman did not raise dispute for long period. The dispute was raised after 9 years. Government had refused to refer dispute. Only after direction in Writ Petition No. 2530/97, Government referred the dispute. It is reiterated that termination of services of Ist party workman is proper and legal. Ratio held in various cases has been referred. Workman himself was unauthorisely absent without sanctioned leave, was irregular in attendance, such conduct was not expected from probationer. Workman did not reply to the showcause notice. The Competent Authority considering terms and conditions of service terminated workman for long unauthorized absence. Action of management is proper and legal.

4. After statement of claim filed by Ist party, management filed additional Written Statement reiterating contentions that workman was unauthorisely absent without sufficient cause. Therefore his services were terminated.

The conduct of the workman during probation period was not proper. Workman has made objectionable allegation. 2<sup>nd</sup> party prays reference be answered in its favour.

5. Workman filed rejoinder reiterating contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the dispute raised under reference by workman is not tenable on ground of latches and delay?	Reference is not tenable
(ii) Whether the action of the management of General Manager, Gun Carriage Factory Jabalpur in terminating the services of their workman Shri Sudesh Kumar w.e.f. 30-11-85 is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

7. 2<sup>nd</sup> party management has pleaded in Para 6 of the Written Statement that the dispute raised after lapse of 9 year is not tenable. Infact the order of reference mentions that services of workman were terminated on 30-11-85. The dispute has been referred vide order dated 25-11-07. In affidavit of workman he has stated that his services were terminated on 30-11-85. The affidavit of evidence of management's witness finds reference that Writ Petition was filed by workman bearing 2530/97. Hon'ble High Court had passed order on 11-12-2006. On point of delay and latches, Shri A.K.Shashi, counsel for management placed reliance in case between-

Nedungadi Bank Ltd. versus K.P.Madhavankutty and others reported in 2000-AIR-SC-830. Their Lordship dealing with Section 10 of ID Act held that purpose of reference of dispute to Court/Tribunal is to keep industrial peace. Power to make reference to achieve above purpose cannot be exercised at any time say after delay of 7 years and there being no industrial dispute existing or apprehended.

8. Learned counsel for workman Shri Rakesh Soni has not brought any citation on the point to my notice. Considering ratio in above case as the dispute was raised after 9 years as per pleadings in Written Statement is not tenable. Infact after directions given by Hon'ble High Court in the Writ Petition, the dispute has been referred after almost 22 years, reference is not tenable. For above reasons, I record my finding in Point No.1 in Negative.

9. Point No.2- The term of reference pertains to legality of termination of services of Ist party on 31-11-85. Workman filed affidavit of his evidence workman has stated that he was appointed on compassionate ground on 11-9-84 as messenger boy. His services were terminated on 30-11-85. Allegations were made against him of unauthorized absence. He was suffering from illness, he could not attend the duty, he was not given showcause notice. He was appointed against vacant post. No enquiry was conducted against him before terminating his services. In his cross examination, workman says his appointment was on compassionate basis. He not received appointment order in writing. He denied document Exhibit M-1, its copy was not given to him. He attended duty during 84-85 after other persons told him about his appointment, workman denies that his appointment was on probation period for 2 years. Workman was unable to tell how many days he worked in 1985, for how many days he was absent from duty. Workman explained he worked for 1 ½ years. Workman denies he not given intimation about his absence to the management. workman explained that his mother has given intimation about his illness. He was unable to tell for how many days of his absence, his mother had given intimation to the management. whether intimation was given orally in writing. He admits that the employees of GCF and his family members get treatment in hospital run by management. that he was residing at 2 ½ kms distance from GCF factory. He had not secured medical card, he not received medicines from GCF hospital. He received treatment from outside Doctor. Workman was unable to tell his name. documents of prescriptions are not produced. He denies that intimation about his illness was not given to his family members to the management.

10. Management filed affidavit of evidence of witness A.K.Chourasia supporting his contentions in Written Statement that appointment of Ist party workman was on probation for 2 years. Workman was appointed on compassionate ground. Workman remained absent for 84 days. Showcause notice was issued to workman was not replied. Services of workman were terminated on 30-11-85. After direction in Writ Petition, the dispute has been referred. From evidence of management's witness documents Exhibit M-1 to 4 are admitted in evidence. In his cross examination, management's witness says workman was appointed on probation of 2 years as regular employee.

Showcause notice was issued to workman for absence from duty. Chargesheet was not issued to him. Enquiry was conducted against workman. When documents were not given to workman alongwith showcause notice, workman was not called for personal hearing. As per document Exhibit M-1 appointment order, appointment of Ist party workman was on probation of 2 years. As per condition No. "C", his services could be terminated at any time during probation period by either side without notice. Document Exhibit M-2 shows the period of leave of Ist party workman in showcause notice Exhibit M-3, period of absence of workman is shown 77 days from /4/85 to 9/10/85. Attendance of workman is shown highly irregular. In Exhibit M-4 order of termination, the services of workman are terminated as his services were no longer required.

11. Shri A.K.Shashi for management on the point of termination of services during probation period relies on ratio held in case between-

Governing Council of Kidwai Memorial Institute of Oncology, Bangalore versus Dr.Padurang Godwalkar and another reported in 1992(4)SCC-79. Their Lordship dealing with termination of services of probationer held unless there is direct nexus between charge levelled and action taken, mere making of some preliminary enquiry or examination of complaints against the probationer for assessment of his overall performance would not vitiate the simple order of termination on ground of gainful employment.

In case between New India Assurance Co.Ltd versus Vipin Beharilal Srivastava reported in 2008(3)SCC-446. Their Lordship dealing with unauthorised absence and removal from service held workman unauthorisely absent for over 600 days. During period of absence, leave application sent to employer on which no order passed. Interference as to implied sanction of leave, proper mode for obtaining sick leave. Tribunal directing reinstatement with full back wages on grounds that respondent was suffering from TB and since management did not pass any order on his leave application, the workman was not absent unauthorisely.

The facts of present case are not comparable. Workman not submitted leave application. Even his evidence about giving intimation of illness is not satisfactory. In his cross examination, workman was unable to tell when his mother had given intimation about his illness. Ratio held in the case cannot be applied.

In case of Judicature at Patna versus Pandey Madan Mohan Prasad Sinha and others reported in 1997(10)SCC-409. Their Lordship dealing with termination of services during probation held in case of termination for unsuitability, principles of natural justice not attracted. There is no obligation to communicate the adverse remarks to the probationer before taking decision to terminate his services on the basis of the adverse material but uncommunicated adverse materials can be taken into consideration for assessment of suitability of probationer and forming decision to terminate his services.

In present case, the workman was absent for 77 days during proposed period. Exhibit M-4 order of termination is received that his services were no more required. Workman had not replied to showcause notice M-3. Services of workman are terminated as per condition "C" in appointment order Exhibit M-1.

12. Learned counsel for workman submits that Ist party completed 240 days continuous service. His services are terminated in violation of Section 25-F of ID Act. Workman in his cross was unable to tell how many days he had worked. On the point, Shri A.K.Shashi relies on ratio held in case between-

Surendranagar District Panchayat versus Dahyabhai Amarsinh reported in 2005(8)SCC-750. Their Lordship dealing with Section 25-F, B ID Act held workman to claim protection under Section 25-F of ID Act must prove their existing relationship of employer employee, workman under Section 2(s) ID Act, establishment in which he is employed is an industry, he has put not less than one year continuous service.

13. Shri R.K.Soni pointed out my attention to leave period of 77 days in Exhibit M-2,3 submitted that workman has established he was working more than 240 days. His services are terminated without notice is illegal. From Exhibit M-2, it appear that workman worked for 240 days. Workman was not served with notice. When appointment of workman was on probation and his services are terminated as per condition "C" of Exhibit M- without notice, conditions in appointment order are binding on workman and therefore violation of Section 25-F wouldnot be attracted.

Shri R.K.Soni relies on ratio held in Himanshu Bhatt versus Indian Railway Catering and Tourism Corporation and others in LPA 881/2013 by Delhi High Court. From reading of Para 15, it is clear that termination of service was for unauthorized absence.

In present case, termination order Exhibit M-4 services of Ist party were terminated on ground that his services were no more required. Ratio held in the case cannot be applied to case at hand.

For the same reasons, Shri R.K.Soni also relies on ratio held in case between Pradip Kumar versus Union of India and others by Apex Court. In Para 13 of the judgment, their Lordship observed in our opinion, there is clearly a

live nexus between the decision to discharge the respondent vide order dated 9<sup>th</sup> November, 2009. The disturbance caused by members of the bar in the court of the respondent and his leaving the bench and retiring to his chamber.

The facts of present case are not comparable. Ratio held in the case cannot be applied to case at hand.

Shri R.K.Soni also relies on ratio held in case between Harinandan Prasad and another versus employer to management of FCI and another in appeal No. 2417-2418/2014. In Para 36,37 of the judgment, there is clear reference that reference of circular dated 5-9-87 issued workman had completed 240 days continuous service were regularized as per provision in circular dated 6-5-87. While giing the benefit of that circular to other similar situated employees and regularizing them would therefore be clearly discriminatory. On these facts the CGIT rightly held that he was entitled to the benefit of scheme.

The facts of present case are not comparable. No such circular has been issued in present case. The ratio held in the case could not be beneficially applied to case at hand.

To sumup, the dispute raised by workman is not tenable in view of my finding in Point No.1. services of workman are terminated as per condition “C” of appointment order M-1. Considering his long absence from duty during probation period, termination of services of workman is legal. For above reasons I record my finding in Point No.2 in Affirmative.

14. In the result, award is passed as under:-

- (1) The action of the management of General Manager, Gun Carriage Factory Jabalpur in terminating the services of their workman Shri Sudesh Kumar w.e.f. 30-11-85 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 21 सितम्बर, 2017

**का.आ. 2286.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 28/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.09.2017 को प्राप्त हुआ था।

[सं. एल-12012/221/2003-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 21st September, 2017

**S.O. 2286.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 21.09.2017.

[No. L-12012/221/2003-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/28/2004**

Shri Yashpal Singh Rathore,  
S/o Shri Harpal Singh Rathore,  
28, MIG Mukharji Nagar,  
Dewas (MP)

...Workman

#### Versus

Regional Manager,  
Bank of India,  
Zonal Office, 18, Shanku Marg,  
Freeganj,  
Ujjain

...Management

**AWARD**

Passed on this 3<sup>rd</sup> day of August, 2017

1. As per letter dated 23-2-2004 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/221/2003-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Bank of India in dismissing the services of Shri Yashpal Singh Rathore, S/o Shri Harpal Singh Rathore vide order dated 26-3-0 is legal and justified? If not, what relief is the concerned workman entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted exhaustive statement of claim at Page 5/1 to 15. Case of Ist party is that he was working as Agricultural Assistant at Beesakhedi branch, Distt. Dewas. He was illegally dismissed from service on 26-5-00. Appeal preferred by him to Regional Manager was rejected on 18-9-01. Ist party workman has pleaded that the documents were exhibited without valid evidence. Documents were not proved in Enquiry Proceedings. Workman was not allowed inspection of the documents. Enquiry Officer has wrongly observed that original documents were produced. Agricultural Assistant is authorized to receive loan amount in special circumstances. Enquiry Officer had insisted authority of Defence Representative. It is reiterated that chargesheet issued to him for unauthorized absence illegally accepting money, unauthorisely collected cash. The documents M-3 to M-11 are not relevant for proving the charges.

3. The photocopy of statements enclosed M-12-a,b,c were not submitted alongwith report of the Enquiry Officer. It is reiterated that the statements of witnesses and documents cannot establish the charges against him. Ist party workman has pleaded about the evidence in Enquiry Proceedings were imaginary and disactive. Enquiry was not properly conducted. Evidence of complainants is not reliable. The statements of MW-1, M.K.Agrawal and Mr. Verma were far from truth. It is reiterated that the findings of Enquiry Officer are perverse. The charges are not proved. Evidence of complainant is not reliable. Punishment of dismissal imposed against him is illegal and deserves to be quashed. On such ground, workman prays for his reinstatement with backwages.

4. 2<sup>nd</sup> party filed Written Statement at Page 11/2 to 8 opposing claim of Ist party workman. 2<sup>nd</sup> party submits that chargesheet was issued by Disciplinary Authority, Dy.Chief Regional Manager, Dewas on 27-1-99, R.L.Chopra was appointed as Enquiry Officer in place of Mr. A.K.Saxena. Enquiry was conducted against workman on 9-11-2000. Charges were explained to workman. Workman pleaded not guilty. On 18-11-00, 24-11-00, 25-11-00, 27-11-00, 29-1-00, enquiry proceedings were conducted. Witnesses of management were examined and cross-examined. Evidence of Defence Witnesses was recorded. Enquiry Officer submitted his report on 27-1-01 holding workman guilty of charges. 2<sup>nd</sup> party reiterates that enquiry was conducted following principles of natural justice. Considering report of Enquiry Officer holding guilty of workman, after issuing showcause, punishment of dismissal was imposed. Appeal preferred by workman was rejected. If enquiry is found vitiated, 2<sup>nd</sup> party prayed permission to prove misconduct by adducing evidence.

5. In parawise reply, 2<sup>nd</sup> party prays that the charges against workman have been proved in Enquiry Proceedings. All the documents were proved in the Enquiry Proceedings. Evidence of witness Agrawal, Mohan and Salaudin recorded in Enquiry Proceeding is sufficient to prove charges against workman. That both parties were given opportunity for adducing evidence and cross-examining the witnesses. That Bank is custodian of the money of customers. Once money is put in Bank by the customer, Bank should repay customers money. It is reiterated for proved charges against workman, punishment of dismissal is proper and legal.

6. As per order dated 4-7-3, enquiry conducted against workman is found legal.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

### REASONS

8. Point No.1- Enquiry conducted against workman is found proper and legal as per order dated 4-7-3 whether charges/ misconduct alleged against workman are proved needs to be decided on the basis of evidence on Enquiry Proceedings. Chargesheet Exhibit M-1 issued to workman pertains to workman unauthorisely collected cash from Shri Salauddin borrower of the branch for crediting to his Agricultural Loan Account and issued him counter foil for Rs.3392.68 dated 2-5-88, Rs.10,000 dated 5-5-97 without making corresponding entry in Bank's ledger. He did not deposit said amount in loan Account of borrower and embazelled said amount. That his act amount to misconduct under clause 19.5j. Doing act prejudicial to the interest of bank are gross negligence involving the Bank in serious loss. At the time of argument, learned counsel for workman Shri R.C.Shrivastava was present and submitted that he will submit written synopsis. However Shri R.C.Shrivastava did not submit anything in the matter. Statement of witness No.1 A.K. Agrawal in his evidence says that Rs.10000 given by borrower on 3-5-97 was not credited by Mr. Rathore workman. In his further evidence, witness of the management says workman may have returned amount on 3-12-97. Salauddin had come on 3-12-97 enquiring about deposit of Rs.10,000 in his account. As per statement of Sunny Sai, Salauddin was told to come lateron as Mr. Rathore workman and Mr. Verma were not present in the Bank. That the complaint of Salauddin was about deposit of Rs.10,000 and abuses given to him. MW-2 K.Mohan in his evidence says that in his investigation, he found Y.P.S. Rathore with counter foil dated 5-5-97 for Rs.10,000 and counter foil dated 2-5-88 for Rs.3392.68 to Mr. Salauddin. Both amounts were not credited in accounts of beneficiary. In his cross-examination MW-2 says that the inspection report was based on Salauddin's complaint and bank's record. Statement of complainant Salauddin was recorded as MW-3. Salauddin in his evidence in Enquiry Proceedings says that amount of Rs.10,000 was not credited in his account. He deposited said amount on 5-5-97. He was having original receipt with him. That he had also deposited Rs. 3392.68 on 2-5-88. He was having receipt No. 987622 with him. Said amount was not credited in his account. Pass book was not issued to him. Statement of loan account was not given to him. In his cross examination, Salauddin says he had taken loan for well, pipeline fertilizers and motor. He denied that he had handed over Rs.10,000 to Ramchandra and Rs.13,170 to Mangilal for depositing in account. Defence Witness Isharuddin, Ramchandra and Mangilal examined in Enquiry Proceedings tried to support defence of the workman. However evidence in Enquiry Proceedings cannot be re-appreciated. Evidence of management's witnesses MW-1 to 30 is sufficient to establish charge against workman. Workman had submitted his explanation in Enquiry Proceedings. I donot find reason to disbelieve evidence of management's witness which is consistent to complaint submitted by Salauddin. Evidence of Salauddin is further corroborated by documents receipt of Exhibit M-6 for Rs.10,000. Amount paid by complainant Salauddin was not credited to his loan account. As such charge against workman are established. For above reasons, I record my finding in Point No.1 in Affirmative.

9. Point No.2- In view of my finding in Point No.1 charge against workman are proved. Shri R.C.Shrivastava did not submit written notes or synopsis as submitted at the time of hearing argument. Question remains for consideration is whether punishment of dismissal imposed against workman is proper and legal.

10. Learned counsel for management Shri A.K.Shashi relies on ratio held in case between-

State Bank of India and others versus Ramesh Dinkar Punde reported in 2006(7)SCC-212. Their lordship dealing with punishment and misconduct scope of judicial review held Bank officer found to be connected with issue of STDs in the name of certain individuals against clearing cheques received from various trusts/ boards. He further found to have got overdraft limits sanctioned for said individuals. Bank officer committing such mistake for his personal ends and against the interest of the Bank and depositors held must be dealt with iron hands without any leniency.

In present case, amount paid by complainant Salauddin depositing loan amount, received amount but did not credit in his account. Punishment of dismissal imposed against workman cannot be said improper.

Shri A.K.Shashi relied on ratio held in case between P.V.Balan Nair versus Superintendent of Post Offices, Thalassery reported in 2001-I-LAB-I.C.3201. In para 4 of the judgment, their Lordship observed eventhough in the deposition of the depositor, it is stated that the amount was recorded in the pass book on the same date Bank account shows that amount was credited only on 25-9-93 while the amount was received on 1-9-93. In other words, amount was kept by him unauthorisely from 1-9-93 to 25-9-93 which is misconduct warranting disciplinary proceedings. Since petitioner was acting as Branch Post master and dealing with Saving Bank account utmost integrity and honesty is required.

In present case, workman received amount as discussed above and didnt credit to the loan account of the customer. The punishment of dismissal cannot be said improper.

Reliance is placed in case between State Bank of Patiala and others versus S.K.Sharma reported in 1996(3)SCC-364. Ratio held in above cited case pertains to the procedure and violation of Rule 16(b) clause 3 of CCS CCA Rules. Detailed discussion is not required.

Further reliance is placed on Union Bank of India versus Vishwa Mohan reported in 1998-I-LLJ-1217. Their Lordship held in Banking business, absolute devotion, diligence and integrity need to be preserved by every bank employee and in particular by bank officer. If this is not observed confidence of depositors would be impaired.

Considering ratio in above cited case and evidence on record discussed above, punishment of dismissal is proper. No interference is required. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of the management is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 21 सितम्बर, 2017

**का.आ. 2287.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, चंडीगढ़ के पंचाट (संदर्भ सं. 32/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.09.2017 को प्राप्त हुआ था।

[सं. एल-12012/56/2016-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 21st September, 2017

**S.O. 2287.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 21.09.2017.

[No. L-12012/56/2016-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

**BEFORE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,  
CHANDIGARH**

**CASE NO. ID No 32 of 2016**

Sh. Gulshan Passi/Vise president, PNB Workers Union,  
House No. B IV-1543 Mohalla- Missaran,  
Ludhiana (Punjab)

...Petitioner

#### Versus

The Dy. General Manager(Circle Head),  
Circle Office,PNB House, Sector 17/B,  
Punjab National Bank,  
Chandigarh

...Respondent

#### Appearances :

For the Workman : Nemo  
For the Management : Nemo

#### AWARD

17/08/2017

Government of India Ministry of Labour vide notification No.L-12012/56/2016/ IR(B-II) dated 02.09.2016; the Central Govt. has referred the following dispute to this Tribunal for adjudication:

*'Whether the action of the management of Punjab National bank in not releasing the payment of subsistence allowance w.e.f the date of suspension i.e 7.11.2014 to the workman Sh. Gulshan Passi and not paying interest*

*on withheld amount of subsistence allowance for the period of 7.11.2014 to 31.12.2015 @ 18% per annum are legal and justified? If not what relief the workman/Union is entitled to receive?’*

This reference dates back to September 2016 but the workman has continuously been absenting right from day one. The case has been adjourned for half a dozen times for appearance of the workman but it has not yielded any result because the workman appears to be least interested in pursuing the matter.

The reference relates to non-payment of subsistence allowance to the workman with effect from the date of his suspension i.e 7/11/2014 but the workman has not shown any interest in carrying the matter to its logical end. The reference cannot be answered due to the unexplained long absence of the workman and his failure to substantiate his claim because it was for the workman to establish that he had a right to get the subsistence allowance during the period of the suspension which right was taken away by the management without any justifiable reasons but then the workman has not been able to put forth his stand. So the case is dismissed for non appearance of workman. Accordingly the reference fails.

Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

A. K. KOUL, Presiding Officer

नई दिल्ली, 21 सितम्बर, 2017

**का.आ. 2288.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 02/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.09.2017 को प्राप्त हुआ था।

[सं. एल-39025/01/2017-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 21st September, 2017

**S.O. 2288.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 21.09.2017.

[No. L-39025/01/2017-IR (B-II)]

RAVI KUMAR, Desk Officer

## ANNEXURE

### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 02/2011

#### BETWEEN :

Sri Raj Kumar  
s/o Sri Ram Milan,  
R/O E-74 Sector M-1, Ashiyana Colony  
Kanpur Road, Lucknow(U.P.)

#### AND

1. The Zonal Manager  
Bank of India,  
Lucknow Zone, Star House  
Vibhuti Khand, Gomati Nagar,  
Lucknow,
2. Branch Manager  
Bank of India, Branch Bijnaur  
Lucknow

**AWARD**

1 The workman has filed petition directly under section 2A of the I.D. Act. 1947 (14 of 1947) against the Zonal Manager and Branch Manager, Bank of India, Lucknow for adjudication.

2 As per the claim statement W-1, the workman has stated in brief that the application for conciliation was moved by him but it failed and thereafter the present petition has been filed before this Court. It has been pleaded that the applicant was appointed as Class IV employee for general work as Safai Karmchhari and also for General Clerical work by opposite party No. 2 w.e.f. 1.10.2016 and was paid @ Rs.100/- day, he has been working as per the instructions of his superiors and he was paid his wages accordingly. He has asserted that he was assigned the work of Daftary and was required to make entries in various forms and work of Safai Karmchhari was also often assigned to him; and payment on vouchers was made on the directions of the then Branch Manager Sri Vinood Bihari Mishra, he was required to write the bank books such as dispatch register etc. in his own hand writing, local branch posts which was prepared only in the year 2010, clearing register was also maintained by him and in his own hand writing which is available in the bank.

3 The workman has further stated that loan files of the bank was also dealt by him, thanks letter was prepared by him on the directions of his superiors, village register, insurance register, pension register etc. were also prepared by him. The petitioner has alleged that he has completed more than 3 years of service as Safai Karmchhari but his services were terminated on 6.6.2010 without any notice and without compliance of the provisions of Section 25 of the I.D. Act., no compensation was paid to him, no reason of termination was given. With the aforesaid pleadings request has been made to reinstate him with full back wages and continuity of service etc.

4 Several documents have been annexed as W-1/11 to W-1/79.

5 The management has filed written statement M-5 stating therein that there was no vacancy in the Bank at the relevant point of time, the petitioner has never worked continuously instead the petitioner might have worked intermittently and casually when any exigency would have arisen. The opposite party has submitted that petitioner is not covered within the definition of workman as provided in the I.D. Act., neither he has ever completed 240 days in a calendar year, since he was not employed in the bank hence the question of alleged termination of service does not arise. No process of recruitment was under taken, no officer other than Zonal Head is competent to appoint any subordinate staff, and as per the settled law no back door entry is permissible in public employment.

6 Opposite party has stated that M/s. R.B. Air Express Courier Service used to provide services to the opposite party bank as per the agreement entered with it from time to time and was paid accordingly for the same and in that process Sri Raj Kumar used to visit the branch to collect the consignment in the name of M/s. R.B. Air Express Courier Service, Lucknow and was paid accordingly as per the agreement but there was no relationship of master and servant between the petitioner and the opposite party at any point of time. With the aforesaid averments the bank has requested to reject the claim statement.

7 With strong denial of the counter allegations made in the written statement, and reiterating the pleas taken in the claim statement, rejoinder W-6 has been filed by the petitioner. Later on as per list M-10 several documents have been filed by the management.

8 The workman Sri Raj Kumar has filed his affidavit W-16 in its evidence and he has been thoroughly cross-examined by the management. The management has filed the affidavit of Sri Hira Lal as M-19, he has been cross-examined on behalf of the workman.

9 Arguments of Learned Authorized Representatives of both the parties have been heard at length. Record has been scanned thoroughly.

10 The petitioner has claimed himself as having been appointed as class IV employee/Safai Karmchhari by the Branch Manager of the bank and some clerical work was also performed by him on the directions of his superior authority. The management while vehemently denying the version of the petitioner has submitted that he was merely an employee of some Courier Service and during the normal course of business between the Courier Service and the Bank, he used to visit the branch and some entries in the registers might have been written by him. The management has denied any employer employee relationship as well.

11 Several material documents have been annexed by the petitioner with the claim statement, from W-1/11 to 1/79. The workman has supported his claim statement with the affidavit. Sri Hira Lal, Sr.Branch Manager has filed affidavit M-19 in support of written statement. Para 9 of the affidavit reads as under;

**“That as matter of fact the concerned workman was providing the services of the courier in the Branch thus a matter of practice the dispatch register and clearing register are maintained by them as employee of the courier company. Moreover, mere entry in the register would not confer the right of public employment with the workman....”**

12. The Manager has admitted that **dispatch register and clearing register** were being maintained by the petitioner but he was an employee of the courier company. Such type of submission made by the Branch Manager, is impliedly admission on behalf of the management that bank's day to day working was also performed by the petitioner with the permission and under the direction of the bank authorities.
13. The bank Manager Sri Hira Lal in his cross examination dated 13.10.2015, on page 4 has admitted document 1/40, 1/41 to 1/50, further 1/51 to 1/75. On page 5 other documents 1/76 to 1/78 have also been admitted. The management witness has admitted on page no. 6 that documents 1/51,1/56,1/57, 1/61 have been written by the petitioner Sri Raj Kumar on his directions (Directions given by the Branch Manager). Further several entries in the bank registers have been admitted in the hand writing of the petitioner, as per the details furnished by the management witness on page 7 of the cross examination. These bank documents were being written by the petitioner on the directions of the Branch Manager.
14. Letters dated 5.12.2007, 24.3.2008 have not been denied by the management. In these letters the signature of the petitioner Sri Raj Kumar has been attested by the Branch Manager and he has been entrusted by the manager to bring the important documents from Government Business Branch of State Bank of India. Another letter 1/76 dated 18.3.2010 sent by the Branch Manager to the Post Master has not been denied by the management. In this letter Sri Raj Kumar petitioner has been referred as **"STAFF"** and his signature has also been attested by the Branch Manager. During the Havan Ceremony in the bank the petitioner Sri Raj Kumar is apparently sitting alongwith other bank employees in the photograph 1/78 to 1/79.
15. The workman has been thoroughly cross examined on behalf of the management, no material contradiction or inconsistency has been reflected in his cross examination. The admission of the management witness before this court regarding hand writing and work performed by the petitioner is quite material, and can not be ignored. The documents filed by the management as per list M-10 also do not strongly support the version of the management, neither these documents controvert the pleas taken by the petitioner, as inferred on comparative evaluation and analysis of the evidence adduced by both the parties.
16. Learned AR of the workman has relied upon the pronouncement of Hon'ble Supreme Court in BSNL Vs Bhurumal, judgment dated 11.12.2013 (2013, Law Suit 1128).
17. Learned AR for the management submits that the aforesaid citations does not apply to the fact of the present case.
18. Gross violation of Section 25F of the I.D. Act is quite apparent in this case. As per the claim statement the petitioner has submitted that he was appointed as Class IV employee for general work as Safaikarmchari @ Rs.100/- per day and he was paid his wages accordingly by the opposite party. In para 6 of the claim statement it has been pleaded that the applicant has completed more than 3 years of service as daily wager/Daftari/Safaikarmchari in the said branch of the Bank. Although the opposite party has denied any master-servant relationship and has further submitted that the petitioner was merely an employee of the Courier Service and he has got nothing to do with the bank employment, even then it has been admitted in the documents submitted by the petitioner as well from the cross examination of the Bank Manager that day to day maintenance of the bank registers was being carried out by the petitioner on the directions of the Branch Manager. Under such circumstances it is clearly reflected from the evidence available on record that the petitioner has worked in the bank for about 3 years as daily wager.
19. In 2013, Law Suit (SC) page 1128 Hon'ble Supreme Court has observed in para 23:
- "While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the I.D. Act., this Court is consistent in taking the view in such cases reinstatement with back wages is in lieu of reinstatement. In Man Singh which was also a case of BSNL, this Court had granted compensation of Rs.2 Lakh to each of the workmen when they had worked for merely 240 days. Since the respondent herein worked for longer period, we are of the view that he should be paid a compensation of Rs.3 lakhs...."**
20. Principle propounded by Hon'ble Supreme Court in 2010 (6) SCC, Telegraph Department vs Santosh Kumar Seal, page 773 is also quite relevant.
21. After having heard intellect arguments of Learned ARs of both the parties, in the light of the record available before the Court and law propounded by Hon'ble Supreme Court in the aforesaid cases, it is inferred that the petitioner has successfully proved that he has worked for about 3 years as daily wages in the opposite party bank and violation of Section 25-F of the I.D. Act. is quite apparent. Instead of his reinstatement, it would be quite just and appropriate to award compensation of Rs.3 lakhs to the petitioner, and it shall be paid by the opposite party within ten weeks from the date of notification of Award, failing which the management shall pay interest @ 6% per annum to the petitioner.

22. Award as above.

LUCKNOW

25.07.2017

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 21 सितम्बर, 2017

**का.आ. 2289.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, चंडीगढ़ के पंचाट (संदर्भ सं. 5/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.09.2017 को प्राप्त हुआ था।

[सं. एल-39025/01/2017-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 21st September, 2017

**S.O. 2289.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 21.09.2017.

[No. L-39025/01/2017-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

#### CASE ID No. 5 of 2016

Satish Kumar son of Sh.Chhajju Ram R/O Jai Maa Nagar,  
Street No. 3L, Ferozepur

...(Petitioner)

#### Versus

- 1) Dy.General Manager, Bank Of Baroda (Region PJKR)  
Regional Office, Foot-ball Chowk, Jalandhar City.
- 2) Branch Manager, bank of Baroda, The mall,  
Opposite Tower Hall, Ferozepur City

...(Respondents)

For the Workman : Nemo

For the Management : Nemo

#### AWARD

16/8/2017

The workman raised a dispute directly before this Tribunal regarding his termination from service by the respondent Management of Bank of Baroda, on the certificate issued by the Assistant Labour Commissioner (Central) Jalandhar vide its letter No.JAL/7(01)/2016/ALC dated 08-04-2016 under Section 2A(2) of the Industrial Disputes Act, 1947 as the conciliation proceedings could not be concluded within the prescribed time.

2. The record bears testimony to the fact that the workman is continuously absent since last 5 hearings, which is suggestive of the fact that he has settled the claim with the management or has no interest to pursue this matter. It is on his motion that the dispute has found way to the court but the workman is not interested in going along with the litigation, so the Court is left with no option but to dismiss the case for non prosecution. The case is accordingly dismissed and file be consigned to records after completion.

3. The Industrial Dispute is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

A. K. KOUL, Presiding Officer

नई दिल्ली, 21 सितम्बर, 2017

**का.आ. 2290.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 81/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.09.2017 को प्राप्त हुआ था।

[सं. एल-12012/86/2003-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 21st September, 2017

**S.O. 2290.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Union Bank of India and their workmen, received by the Central Government on 21.09.2017.

[No. L-12012/86/2003-IR (B-II)]

RAVI KUMAR, Desk Officer

### ANNEXURE

### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

**PRESENT : RAKESH KUMAR, Presiding Officer**

**I.D. No. 81/2003**

Ref.No. L-12012/86/2003 IR(B-II) dated 25.07.2003

### BETWEEN :

Sri Rajendra Kumar  
268/5, Subhash Nagar  
Meerut(U.P.)-250001

### AND

1. The General Manager,  
Union Bank of India  
239, Vidhan Bhawan Marg, Nariman Point  
Mumbai-400021

### AWARD

1. By order No. L-12012/86/2003-IR(B-II) dated 25.07.2003 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Sri Rajendra Kumar, Meerut and the General Manager, Union Bank of India, Mumbai for adjudication.

2. The reference under adjudication is:

**“WHETHER THE ACTION OF THE MANAGEMENT OF UNION BANK OF INDIA IN DISMISSING SRI RAJENDRA KUMAR, CLERK-CUM-CASHIER FROM SERVICE W.E.F. 12.7.1999 IS JUST, FAIR AND LEGAL? IF NOT, WHAT RELIEF IS HE ENTITLED TO?”**

3. The workman in his claim statement A1-3 dated 27.10.2003, has stated in brief that he had completed about 13 years of service with clean service record in the opposite party Bank, he has been working in the Bill Department, he was attending the job of balancing of Books w.e.f. March 1996 to July 1997, and on 12.4.1996 when he was working in Bill Department, his seat was adjacent to Current Account Ledger Counter, two cheques amounting to Rs.23,582/- and Rs.19,960/- were submitted by M/s Narendra Tyre to credit the same to the current account of M/s Apollo Tyres Ltd. It has further been asserted that the bearer of the cheques being in hurry he wanted immediate draft from M/s Apollo Tyres account, however since the Ledger Keeper was not on the counter, so on the request of the bearer the cheques were posted by the workman. Later on it was found that the cheques were encashed by another workman namely Sri G.S.Rawat but the applicant workman was suspended from service since the cheques were posted by him, enquiry was conducted and workman was dismissed although the punishment was based upon the perverse findings of

the enquiry officer, intervention of the Conciliation Authority was sought, management did not agree to settle the case, later the case was sent to the Ministry which referred the schedule to this Court.

4. The petitioner has asserted that he joined the service of the Bank on 29.01.1984 as Clerk-cum-Cashier, was posted at Delhi Road, Meerut branch from 10.03.1992 to 24.04.1997, he has completed 13 years of service with clean record. The aforesaid cheques were scrolled and token issued by another Clerk Sri G.S. Rawat and those cheques were paid by him. Credit entry of Rs.43,542/- to M/s Appollo Tyres was made by the workman on the basis of credit voucher on 4.6.96, which was properly supervised by the officer of the bank. The workman was unduly suspended vide bank letter dated 17.4.97, charge sheet on 6.6.97 was issued, false charges were framed. Charges of gross misconduct and minor misconduct was leveled against the workman which was denied by him, enquiry officer and disciplinary authority was appointed, material on record was ignored and perverse findings were recorded, upon his own imagination he arrived at wrong decision, defence submitted by the workman was ignored. The workman has stressed that the cheques drawn in favour of Limited Company, were not to be paid in cash but cash payment was made by Sri G.S.Rawat even then the workman was punished without any basis. Had the Supervisor officer been little more attentive, fraud could have been avoided and guilty person would have been caught. Allegations have been made by the management that the workman made fictitious entries without supporting voucher, in the enquiry proceeding no staff of the branch was adduced in evidence against the workman. Even then he has been dismissed from service without any cogent reason. Appeal submitted by him has also been decided against him without proper application of mind and consideration of the material available on record. The workman has alleged that he has been without employment since his dismissal. With the aforesaid pleadings request has been made by the petitioner seeking direction to the bank so as to withdraw illegal order of dismissal and to reinstate him with full back wages, increment, seniority etc.

5. As per list C-4 several documents have been annexed by the workman.

6. The opposite party bank in its written statement A2-13, denying therein the main allegations of the claim statement, has stated in brief that the petitioner was working as Clerk-cum-Cashier during the period 1996 to 1997 at Delhi Road Branch, Meerut and certain acts of omission and commission were reported against him, so he was suspended vide memo dated 17.4.97, charge sheet dated 6.6.97 was issued for gross and minor misconduct on duty, although the charges were denied by the petitioner. Thereafter departmental domestic enquiry was ordered, enquiry proceeding were conducted as per Rules. The management has further asserted that enquiry proceeding commenced on 3.3.99 and were concluded on 4.3.99 in two sitting, workman was provided full opportunity to defend himself, he appointed Sri V.K. Bhargava as defence representative, copies of relevant documents were provided to him, two witness were cross examine by the management, the workman was asked to cross examined the witness and oppourtinity to further adduce evidence in defence was also provided but he deliberately avoided his oral evidence and also his cross examination by the management.

7. The opposite party has asserted that the enquiry is quite fair and proper, even then this Hon'ble Tribunal if comes to the conclusion otherwise, the management may kindly be allowed to lead evidence afresh. After elaborate enquiry proceedings, proposed punishment therefore letter dated 19.6.95 was conveyed after considering the written and oral submissions of the petitioner workman, he was dismissed from service from the bank, thereafter appeal was preferred. After personnel hearing of the workman, the Appellate Authority inferred that the findings of the enquiry officer were based on proper evaluation and evidence.

8. The opposite party has stressed that the petitioner got hold of the two cheques for Rs.23,582/- and Rs.19,960/- to be credited in the account of M/s Appollo Tyres and he asked Sri G.S. Rawat, Clerk cum Cashier of the branch to scroll and issue the token, thereafter the petitioner workman posted both the cheques in the current account and took the payment of Rs.43,542/- from Sri G.S.Rawat and utilized the amount for his personal gains, fictitious credit entries for the sum were made in the current account of M/s Appollo Tyres without any supporting vouchers on 4.6.96 with malafide intention to cover his misdeeds. The opposite party has alleged that the workman handed over the cash of Rs.38,542/- and Rs.5000/- on 5.7.96 and 19.7.96, respectively to Sri G.S.Rawat so as to deposit the said amount in the current account of M/s Appollo Tyres. It has been alleged that the workman in connivance with Sri G.S. Rawat committed fraud to the tune of Rs.43,542/- and he utilized the same for his personal needs.

9. The opposite party has asserted that the departmental enquiry was conducted keeping in mind the principle of natural justice, and Rules were followed by the bank authorities, adequate assessment of entire evidence was made. The Appellate Authority after thoroughly perusing the record available and after deep consideration of defence version as well, decided the appeal preferred by the appeal.

10. The management has further asserted that the punishment of dismissal awarded to the petitioner is commensurate to the nature of charges proved against him and dishonesty on duty can never be adjusted. With the aforesaid pleading, the management has claimed its action as fully legal and justified, and has submitted that the petitioner is not entitled to any relief.

11. As per list C-14 several documents have been filed by the management.
12. With denial of the averments in the written statement, rejoinder A-17 dated 23.6.2004, has been filed by the petitioner workman, reiterating the pleas taken in the claim statement.
13. The petitioner has got himself examined in the evidence. He has been thoroughly cross examined on behalf of the management. The management has filed affidavit A-25 of Sri P.V. Bhaskar Reddy, Sr. Manager as evidence. He has been comprehensively cross examined on behalf of the workman.
14. On 3.11.2009, following two preliminary issues were framed by the then Hon'ble Judge/Presiding Officer;
  1. Whether the enquiry officer followed the principle of natural justice during the enquiry proceeding;
  2. Whether the conclusion drawn by the enquiry officer was perverse and prejudiced?
15. Vide order dated 25.1.2016, preliminary issue no.1 has been decided by this Court in favour of the management. The opportunity was afforded to both the parties to forward their arguments regarding issue no.2. Further on the request and with the consent of both the parties arguments at length were heard of both the parties on issue no.2 as well on merit of the case. Record has been scanned thoroughly.
16. It has been emphasized on behalf of the workman that prejudiced and unfair enquiry was conducted by the management although being innocent, he was held guilty and improper punishment of dismissal from service was awarded to him. Per contra, it has been vehemently argued on behalf of the management that reasonable opportunity to defend himself was provided to the workman, copies of all the relevant documents were also given to him and he was asked to lead evidence in his defence. Principle of natural justice and established Rules were followed by the Bank authorities.
17. The petitioner Sri Rajendra Kumar in para 2 of his statement on oath recorded on 18.11.04, has admitted that the enquiry was conducted properly. In his cross examination dated 22.3.05 he has asserted that he was asked to appoint his defence representative and consequently Sri V.K. Bhargava was appointed by him as Defence Representative but neither any witness nor any bank employee was adduced by him in defence, moreover no defence witness was requested by him to be summoned. During the enquiry, all the documents requested by him were provided to him.
18. It has been brought to the notice of this Court during the argument that the other employee Sri G.S. Rawat, whose connivance with the petitioner workman has been alleged, is also no more in the service of the bank, and Sri Rawat has also been dismissed by the management.
19. It has been alleged on behalf of the petitioner that he has been performing his duties in the Bank with sincerity and dedication and he has got a clean record of about 13 years, some other employee of the Bank committed a fraud but the petitioner was unduly suspended, enquiry was conducted, frivolous charge sheet on fake charges were issued, and he was dismissed from service, without affording any sufficient opportunity. It has also been stressed that the enquiry officer and superior authorities were prejudiced, and the conclusion was drawn on the basis of perverse domestic enquiry, and principle of natural justice was not followed. The management has strongly refuted the allegations and has submitted that the sum to be credited in the account of M/s Apollo Tyres, was illegally encashed by the petitioner in connivance with another employee Sri G.S. Rawat and with such dishonesty one has got no right to be a Bank employee. The opposite party has further emphasized that thorough and comprehensive enquiry was conducted, sufficient opportunity was given to defend himself and defence representative was also appointed but the petitioner intentionally refrained himself from adducing his evidence, consequently the management could not cross examine him. Later on the petitioner after about 3 months, handed over the cash embezzled by him to the other bank employee so as to deposit the same in the current account of M/s Apollo Tyres.
20. It is quite evident from the perusal of the record that sufficient opportunity was provided to the petitioner employee to defend himself during the domestic enquiry. Defence representative as per the choice of the petitioner was also appointed, management witness were examined during the enquiry but the petitioner did not adduce himself for cross examination. There is no reason to infer that the enquiry officer has ever been prejudiced, the whole proceeding of the domestic enquiry was fair, transparent, as per Rules, keeping in view the principle of natural justice as well. Preliminary issue no.2 is decided accordingly in favour of the management.
21. Learned AR for the workman has relied upon the following Rulings;
  1. 2000, SCC(L&S) Hardwari Lal Vs. State of UP page 85.
  2. 2010,(1) SCC,(L&S) Union of India Vs Gyan Chand Chattar page 129.
  3. 1999, SCC(L&S) Kuldeep Singh vs Commissioner of Police page 429.
  4. 2006, SCC(L&S), M.V.Bijlani vs Union of India page 919.

5. 1963, IT, LLJ, page 452, Hon'ble SC
6. AIR 1997, SC, Narayan D.Ram. Teerath Khar Vs State of Maharashtra, page 2148.
7. 2013(2) SCC(L&S), page 270.
8. 2013(4)SCC page 301.
9. WP No. 2326/04 dt. 2.3.05, Hon'ble High Court, AP
10. (2009)1,SCC(L&S) page 398.
11. (2013)4,SCC, 301.

22. Learned AR for the opposite party submits that the aforesaid Rulings do not support the pleas taken by the petitioner in this case. He refers in support of his assertion the following Rulings;

1. 2005, SCC,(L&S), MP Electricity Board Vs Jagdish Chand Sharma page 417.
2. 2006,SCC, (L&S), SBI & Others Vs Ramesh Dinkar Punde page 1573.

23. Learned AR for the petitioner workman stress that above Rulings of the management are not applicable in the present case.

24. It has been proved beyond doubt that the domestic enquiry was conducted in its full fairness, sufficient opportunity was provided to the delinquent employee, principle of natural justice was followed, no prejudice was ever caused, the explanation given by the workman was genuinely not found satisfactory. Under these circumstances it is now to be ascertained whether the punishment awarded by the management is appropriate and judicially sound, or not.

25. **This fact can not be diluted that the Bank employee holds a position of confidence and trust. Account holders and people involved in, commercial/financial transactions must not be put to sufferings or a cryptic situation of uncertainty must not be permitted to arise, due to dishonesty and unfair working of Bank employee. Integrity beyond doubt with utmost honesty and sincerity are inbuilt ingredients of bank functioning. Embezzlement of public money can not be dealt with casually or leniently.** Hon'ble Supreme Court in (1989),2,SCC, Union of India vs Parmanand and others page 177/189, has directed that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment can not be equated with an appellate jurisdiction. It has further laid down that the Tribunal can not interfere with the findings of the enquiry office or competent authority where they are not arbitrary or utterly perverse. Hon'ble Apex Court, in this regard has propounded noteworthy principles in the following citations;

1. (2003) 4, SCC, Chairman & Managing Director, United Commercial Bank Vs PC Kakkar, page 363 (Para 14)
2. (2003), 3, SCC, Regional Manager, UPSRTC Vs Hoti Lal page 605 (Para 10).
3. (2005), 3, SCC, Cholan Roadways Ltd. Vs Thiru Gnanasambandam, page 247 (para 15).

26. After having heard, intellect arguments of both the parties thoroughly, and perusal of the record, in the light of the above pronouncements of Hon'ble Supreme Court and Hon'ble High Courts, it is inferred that the action of the management of Union Bank of India in dismissing the petitioner workman Sri Rajendra Kumar, Clerk-cum-Cashier w.e.f. 12.07.99, can not be adjudicated as unjust, unfair, and illegal. The petitioner workman is not entitled to any relief.

27. Award as above.

LUCKNOW  
28.08.2017

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2291.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 41/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.09.2017 को प्राप्त हुआ था।

[सं. एल-22012/14/2015-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 25th September, 2017

**S.O. 2291.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the management of M/s. W.C.L. and their workmen, received by the Central Government on 01.09.2017.

[No. L-22012/14/2015-IR (CM-II)]

RAJENDER SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/41/2015

Secretary,  
Rashtriya Koyla Khadan Mazdoor Sangh (INTUC)  
Ambara Colliery, Kanhan Area,  
PO Dungaria, The Junardev,  
Chhindwara

...Workman/Union

#### Versus

Chief General Manager,  
Western Coalfields Limited, Kanhan Area,  
PO Dungaria, The Junardev,  
Chhindwara

...Management

### AWARD

Passed on this 20<sup>th</sup> day of July, 2017

1. As per letter dated 13-5-17 by the Government of India, Ministry of Labour, New Dehi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-22012/14/ 2015-IR(CM-II). The dispute under reference to :

“क्या प्रबंधक द्वारा श्री तेजीलाल, गुनवंत सिंह एवं श्री अनवर हुसैन सभी टब लोडर, अम्बाडा कोलियरी का पीस रेट से टाइम रेट पर पद परिवर्तन अपने पूर्व आदेश क्रमांक Amb./Conv.PR to TR/2011-61-374, दिनांक 22-7-2011 के एक वर्ष के अंतराल के बाद अपने आदेश क्रमांक Amb./Conv/PR To TR/2012-394 दिनांक 20-7-12 द्वारा करना तथा वेतन रुपए 1386 के स्थान पर रुपए 1366 प्रतिदिन करना न्यायसंगत है ? यदि नहीं तो कर्मकार क्या अनुतोष पाने का अधिकारी है ?

2. After receiving reference, notices were issued to the parties. Ist party workman failed to appear in reference proceeding. Claim against workman is proceeded exparte on 4-5-2017.

3. Management filed Written Statement. Management submits that workman has not filed statement of claim. Claim under reference pertains to pay protection due to conversion from piece rated to time rated post. That all the workers were piece rated their Form B are produced. The service conditions of employees are covered by NCWA, standing orders. Coal mine were nationalized in 1973. During the period manpower was used for execution of several category of work. After modernization and open mechanized mine, manual work is not required. The employees rendered surplus were offered alternative job. The employees did not agree for alternative job. To avoid termination from service, settlement was arrived between Union and Management. That management shall on conversion from piece reted to time rated fully protect the gross wages including SPRA wherever applicable. The basic pay so fixed in time rated EMR category, balance will be treated as personal pay etc. such clause is reproduced. It is also agreed that the cases alrady converted between 4-11-90 to 3-12-91 shall be considered for notional only and earalier cases will not be considered. It is reiterated that because of modernization of mines and intoduction of new mechanism for extracting coal, manual working is not required. The piece rated workers have no job to offer. They were converted in time rated mechanized mines to avoid retrenchment.

4. Management also filed affidavit of evidence of Shri Arun Kumar Sharma supporting contentions in Written Statement.

5. Ist party workman has not participated in reference proceeding therefore I record my finding in Point No. 1 in Affirmative.

6. In the result, award is passed as under :-
- (1) The action of the management is proper and legal.
  - (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2292.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एन. सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 36/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.09.2017 को प्राप्त हुआ था।

[सं. एल-22012/140/2006-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 25th September, 2017

**S.O. 2292.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the management of M/s. N.C.L. and their workmen, received by the Central Government on 01.09.2017.

[No. L-22012/140/2006-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/36/2007**

The President,  
Koyla Shramik Sabha (HMS),  
Qr.No.B-10, Amlohari Project, NCL,  
Sidhi (MP)

...Workman/Union

#### Versus

Chief General Manager,  
Nigani Project of NCL,  
PO Nigahi, Sidhi (MP)

...Management

#### AWARD

Passed on this 20<sup>th</sup> day of July 2017

1. As per letter dated 6-3-2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/140/2006-IR(CM-II). The dispute under reference relates to:

“Whether the demand of the Union that Shri S.K.Saxena is entitled to get proper designation/ wage as per terms and conditions of selection for the post of large capacity Excavator Operator/ Draline Operator and is also entitled to operate Dragline Excavator is legal and justified? If so, to what relief is the workman entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submits his statement of claim. Case of Ist party workman is that he was initially appointed as Assistant Store Keeper on 2-8-81. He was posted at Gorbi Project of NCL. He alongwith Shri S.C.Bhattacharya, Shri Fate Bahadur Singh were selected for the post of Large Capacity Excavator Operator/ Dragline Operator vide order dated 12-1-1985. That as per terms and conditions in said order, workman and Bhattacharya were entitled to get designation and pay scale of large capacity excavator/ dragline operator special grade after completion of 9 year service as large capacity excavation operator. After his selection, workman was posted at Bina Project where he joined on 25-1-85. Thereafter workman was transferred to Amlohri project where he joined on 3-9-85. That the facility for training of dragline was not available in Amlohri

Project. That he was ready to receive training for dragline operator. Management deliberately did not give him training of operator though the management was bound to give him such training. Workman submits that he is therefore entitled to designation and wages for the post of large capacity excavator operator from 12-1-94. Management has given designation and wages of dragline operator of Mr. Bhattacharya and Fate Bahadur as per order dated 16-4-97 w.e.f. 20-1-92. The act of the management is discriminatory and illegal. On such ground, Ist party workman prays that reference be decided in its favour. Difference of wages for post of Clerk Grade III be allowed. It appears prayer has been made for regularization of services of Smt. Sandhya Gupta not consistent with terms of reference.

3. 2<sup>nd</sup> party management filed Written Statement opposing claim of workman. Preliminary objection is raised that the terms of reference is vague. The particulars of the designation which is being demanded by workman, particulars of wages and particulars of the alleged selection process as well as period from which the demands have been made are missing. The reference is not tenable. 2<sup>nd</sup> party submits Shri S.K.Saxena was initially appointed on 24-1-1985, he was posted at Bina Project as Asstt. Store Keeper. Workman was not selected under Excavator Operator Training Scheme. Vide order dated 9-4-85, workman was posted at Gorbi for training for 36 weeks. He joined as Excavator Operator Trainee on 5-4-85. He was allowed to join on 3-9-85. Workman was directed to report to join VTC training. Thereafter he was transferred to Amlohri project. On 3-8-95, workman resumed his duty submitting the joining report as per order dated 4-1-90. On recommendation of DP, Ist party workman and Singh were drawing difference of wages as Shovel Operator Group A in terms of training scheme. The training scheme for operating large capacity excavator for existing employees. Cadre scheme applicable to workman's cadre is produced. Training scheme along with selection letter dated 12-1-85 shows cadre scheme for promotion on completion of training and select trainees will become excavator operator special grade subject to passing the test and recommendation by DP. That workman did not pass Trade test. His case was not recommended by DP for promotion to the post of Large capacity Excavator operator/dragline operator. Workman on selection was granted appropriate grade from Assistant Store Keeper to Daily rated excavator category. Training scheme is clear that trainee will be given post of operator higher capacity excavator. If post is available in the project, workman was regularized as shovel operator Grade A from 25-1-85. After 5 years, he was posted at Amlohri project. No cadre scheme is formulated by JBCCI for providing training large capacity dragline operator after 9 years. While workman was working at Amlohri project, he was careless in his duty, did not carry his duty. He was obstructing work and production. Chargesheet were issued to him. Workman did not show improvement in his conduct. He was not working with devotion at Nigahi. When the test was conducted in 2002 for post of dragline operator, workman was not found fit and eligible. Workman is not entitled for promotion to the post of dragline operator special grade. In parawise reply, above contentions are reiterated by the management. It is submitted that workman is not entitled to any relief.

4. Rejoinder is filed by Ist party workman reiterating contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the demand of the Union that Shri S.K.Saxena is entitled to get proper designation/ wage as per terms and conditions of selection for the post of large capacity Excavator Operator/ Draline Operator and is also entitled to operate Dragline Excavator is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

6. Point No.1- The terms of reference pertains to legality of the demand of Union for giving proper designation and wages to Saxena in terms and conditions for selection for the post of excavator/ dragline operator. Ist party workman filed affidavit of his evidence. He was selected under Excavator Operator Training Scheme. He was sent for training to Gorbi project and thereafter Amlohri Project. Dragline machine was not available at Amlohri Project. 2<sup>nd</sup> party did not transfer him to any other project, where dragline machine was available for training. That only excavator operator special grade can operate P & H 10 cu.m and 20 cu.m Dragline machine and all machines of which capacity is more than 8 cu.m. That he couldnot complete his training due to non-availability of dragline machine and nor he was transferred to any other project where dragline was available. He was working from 3-9-85 to Sept.1998. That he was transferred to Amlohri Project with ulterior motive. In his cross examination, workman denies from ASK to daily rated operator, promotion at monthly rated was given to him. He admits that he was given promotion from ASK to Grade

“C”. he denies that from 25-1-89, he was regularized on post of Shovel Operator. He was regularized on post of Excavator Operator Grade “A”.

7. Management’s witness Matloob Khan filed affidavit of evidence supporting whole contentions of management in Written Statement. That JBCCI has not formulated scheme that trainee will get designation and wages for the post of dragline operator after 9 years. He denied that workman was selected for post of large capacity excavator operator. That workman and others were selected under Excavator Operator training scheme. That workman had not passed trade test. He was not recommended for promotion by DP for post of Dragline operator. The training scheme for promotion shows that cadre scheme for promotion on completion of training of 10 years selected trainees will become excavator operator subject to passing test and recommendation by DPC. Management’s witness in his cross examination admits workman was selected as per training scheme Exhibit M-7. It was responsibility of management to give training. The period of training was 9 years. In 10<sup>th</sup> year, DPC was to be constituted. The details of the training scheme are given in Exhibit M-7. Workman was selected for training on 12-1-1985. After one month, his training started. For training, workman was sent to Gorbi Colliery. Witness was unable to tell its exact date. On 3-9-85, workman joined at Amlohri colliery. In 1999, workman was transferred from Amlohri Project to Nigahi colliery. He was given 9 years training except training on dragline machine. Workman had completed all other trainings. In Amlohri project dragline machine was not available. Management’s witness was unable to tell why workman was not sent for training in machine to other place. Management’s witness admits trainees who completed training on dragline machines were selected in 10<sup>th</sup> year after constituting DP. Workman was considered by DPC, he was not found fit. Witness of management was unable tell that as workman had not received training on dragline machine therefore he was not found fit by DPC. Evidence of workman is silent when dragline machine facility was not available, why he didn’t approach management immediately that he transferred to other places where dragline machine was available. Without any kind of grievance, workman continued to work at Amlohri Project.

8. Management’s witness Sunil also supported management. Document M-11,12 are proved from his evidence. Above witness of management in his cross examination was unable to tell when DP was constituted for selection of Dragline Trainees. He was also unable to tell after completion of training of Dragline trainees in 1995, when DPC was constituted.

9. So far as the documents is concerned Exhibit M-1 is order dated 24—85. Ist party workman along with A.K.Srivastava were released for joining at Bine Project. Exhibit M-2 is Ist party workman and others were posted at Gorbi Project on 9-4-85. M-3 is relieving order dated 5-9-85 for joining Gorbi Project. M-4 is joining report submitted by workman to Amlohri Project. M-5 is office order dated 4-1-90 Ist party workman and Bisen Singh were absorbed on post of Shovel operator Grade A from 25-1-89. Exhibit M-6 is service record, M-7 is Training Scheme.

10. Shri S.Mishra for Ist party workman pointed out my attention to page 3 of the scheme which provides- in 10<sup>th</sup> year, they will be confirmed in the Grade of Special Grade subject to the recommendation of DP to be set up for this purpose. Exhibit M-8 is annexure in 9<sup>th</sup> year of training Grade A+ (Special Grade A) was to be given, in 0<sup>th</sup> year special Grade was to be accorded. When Ist party workman himself did not approach management for training on dragline machine, he was happy with work at Amlohri project. Workman had failed trade test, he was found unfit by DPC constituted after 10 year. Demand of the Union cannot be said proper.

11. The argument advanced by S.Mishra for workman that management be directed to give training to workman on dragline machine cannot be accepted as the age of workman in his affidavit of evidence filed in 2014 is shown 55 years. By this time, workman must be of 58 years age. Directing management to provide training on dragline machine to workman will not serve any purpose. For reasons discussed above, I record my finding in Point No.1 in Negative.

12. In the result, award is passed as under:-

- (1) The demand of the Union that Shri S.K.Saxena is entitled to get proper designation/ wage as per terms and conditions of selection for the post of large capacity Excavator Operator/ Dragline Operator and is also entitled to operate Dragline Excavator is not proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2293.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एस. ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण-सह-श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 62/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.09.2017 को प्राप्त हुआ था।

[सं. एल-22012/84/1992-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 25th September, 2017

**S.O. 2293.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 62/93) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of M/s. S.E.C.L. and their workmen, received by the Central Government on 01.09.2017.

[No. L-22012/84/1992-IR (C-II)]

RAJENDER SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/62/93

The Secretary,  
MP Koyla Mazdoor Sabha (HMS),  
Post South Jhagrakhand colliery,  
Distt. Surguja (MP)

...Workman/Union

#### Versus

Dy.General Manager/ Sub Area Manager,  
Rajnagar Opencast Mines of SECL,  
PO Bengawam,  
Distt. Shahdol

...Management

### AWARD

Passed on this 9<sup>th</sup> day of August 2017

1. As per letter dated 17-3-93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-22012/84/92-IR(C-II) . The dispute under reference relates to:

“Whether the action of the management of Rajnagar Sub Area/ Opencast Mines of Hasdeo Area of SECL in denying the payment of wages as demanded by the Union and not regularizing Shri Shiv Kumar and 21 others (as per list enclosed) is justified? If not, to what relief the concerned workmen are entitled to?”

2. After receiving reference, notices were issued to the parties. MPKMS Union submitted statement of claim on behalf of 22 workmen shown in the list along with order of reference. Case of Ist party is that SECL is undertaking of Government of India. It is state within Article 2 of the constitution. That Shiv Kumar and 22 other claimants were initially working at Bellasiding for breaking of coal, levelling and cleaning of track as well as shunting purpose. After closure of the Bellas siding, they have been engaged at Rajnagar 7/8 siding for same purpose. Union raised dispute before ALC. Management not given specific reply except that it admitted that workers were working as unskilled mazdoors. The dispute ended in failure. The report was sent to Ministry. Vide letter dated 2-6-92, Government had refused to make reference. After Miscellaneous petition 2667/92 was filed on direction given by Hon'ble High Court, dispute has been referred.

3. Ist party submits that all 22 workers were working in permanent perennial regular nature of job which were usually done by departmental workers. Work done by them is covered under clause “Raising or Raising cum Selling”. It is prohibited category of work as per notification dated 1-2-75. It is further contented that under Clause 11.5.0 of NCWA-III, IV, management agreed for not engaging contract labour in permanent and perennial nature of work. Clause 11.5 of the NCWA-III is reproduced. Ist party further contends that claimant workman were engaged in mining job defined under Section 2(1)(j)(vi) Mining Act, 1952. That as per said section, all adits, levels, planes, machinery works, railways, tramways and sidings in or adjacent to and belonging to a mine verbatim is reproduced. Ist party further submits that claimant workers were not paid standard wages ranging from Rs.10 to 15 per day. They were

deprived of NCWA wages and regularization. Their services were utilized for profit and business of the company. Livelihood of the claimants is dependent on job. Management has projected a contractor for name sake simply to exploit poor workmen, deprive them NCWA Cat-II wages. It is further reiterated that workmen were performing their duty under direct supervision of SECL officers. Their attendance were marked by company staff and payments were made by them.

4. As per provisions of Mines Act 1952, management of SECL is bound to maintain certain documents such as Form B Register, Attendance Register, payment register etc. which are strictly under the possession of the management. Those documents are vital for deciding the reference. That management be directed to produce those documents. That during pendency of dispute before ALC Shahdol, management terminated services of workman violating Section 33 of ID Act. The services of workman could not be terminated except approval of the concerned authority. No such approval was sought for terminating services of workman. It is alleged that action of the management is covered as retrenchment under Section 25-F of ID Act. It is also reiterated that similarly situated workman working for same job in Rajnagar siding were taken on company roll and regularized. Workman have been discriminated violating Article 14, 16 of the constitution. Ist party submits that workmen were directly engaged by management for profit and business. They worked more than 240/190 days in a year many times. They were engaged in permanent and perennial nature of job. As per clause 11.5.0 of NCWA-III, IV, management had agreed not to employ contractor's labours on jobs of perennial and permanent nature. Similarly situated workmen were regularized. Workers were paid less wages than prescribed under NCWA, workers were doing their duty under direct supervision of management. On such ground, Ist party prays that management of SECL be directed to treat those workman as its employees from date of employment and pay wages and other consequential benefits.

5. Management filed Written Statement opposing claim of workman at Page 15/1 to 15/8 opposing claim of workman. Preliminary objection is raised that reference is not tenable as order of reference does not disclose particulars of the individuals. Order of reference was made without application of mind. Management is not in position to identify individuals. Management had contented before ALC that claimants workmen were never employed by the management. Question of their regularization does not arise. Reference is based on non-existing facts. The conciliation proceeding ended in failure. Government had refused to make reference. Reference is based on non-existing facts and therefore not tenable.

6. 2<sup>nd</sup> party further submits it is Government company having recruitment policy for recruitment of employees. Vacancies are required to be notified to local Employment Exchange after the names of eligible candidates are sponsored, selection committee constituted and after interviews etc. successful candidates are selected. Claimants were not appointed following such recruitment process. That mines are covered by various legislations including Mines Act. Management is required to maintain Form B Register, Bonus Register, Attendance Register, Form C, D, E Register, entire particulars of employees are entered in Form B Register, service register. Management provides various facilities to employees- free medical, free food, water supply employees are issued medical cards, coal cards. Those documents in possession of the employees are proof of being employed by the management. Management is not empowered to appoint any person without following the recruitment process discussed supra. That in coal industry, certain civil and temporary nature of work are being executed through local contractors for the purpose of establishment of township bldg. etc. are given to the contractors. That construction of road, cleaning, maintenance of colliery premises are done through local contractors inviting tenders. The contractors engage local labours, they are paid minimum wages declared by Collector in the area. For purpose of correctness of payment made by contractors to labours, management representative use to attest payment disbursement list prepared by the contractors. After completion of work, contractors are paid according to the contract. Local labours engaged by contractors for execution of work. Union functioning in colliery taken up the matter for employment and regularization of those labours with management of SECL. That Shiv Kumar and 21 others were never employed by management of SECL. They might have been engaged by contractor for execution of work. Contractor Mahesh, Birendra and others were given contract for execution of work of cleaning and maintenance of siding of Raj Nagar Open Cast Mine. The contracts were given after tendering, issuing work order etc. As soon as the work was completed, contract automatically came to end. Contractors are better persons to tell whether Shiv Kumar and others were engaged by them or not. Management denies employer employee relationship. Those persons were not engaged by SECL. There was no question of maintaining any documents w.r.t. those workers. That management is maintaining statutory records under various legislation.

7. That terms and conditions of the employment of persons employed in coal industry are governed by NCWA. The NCWA wages are not extended to labours engaged by contractor. Contractors are employer who have to decide the rate of wages paid to labours employed by them. Management has to ensure labours engaged by contractor are paid minimum wages declared by District Authorities. It is reiterated that NCWA wages are not applicable to labours engaged by contractor. Management has referred to ratio held in various cases. The claimant workman were not engaged by management, regularization of services of claimants workman would be back door entry which is not

permissible. It will defeat rights of employment of other persons. On such ground 2<sup>nd</sup> party prays claim of 22 claimants for regularization is not maintainable. Reference be answered in his favour.

8. Ist party Union filed rejoinder reiterating its contentions in statement of claim. It is denied that reference is not tenable for want of particulars. It is denied employer employee relationship doesnot exists. Case of workers in reference cannot be compared with normal recruitment in the company. It is totally different matter. Contentions of management w.r.t. recruitment rules is irregular. The civil and temporary nature of work executed through contractor but in instant case, work performed by workers are not in civil nature rather they were engaged in mining jobs covered under Section 2(1)(j)(vi) at Bellas and Rajnagar sidings. They completed 190/240 days attendance. Management had agreed in NCWA-III, IV not to engage contract labour in permanent and perennial nature of job. That management is bound to maintain documents of contract labour as per circular dated 1-2-85 issued by Director of Mines Safety, Jabalpur. Management to deprive legitimate rights of workers shown them contract labourby paper arrangement. Workers were directly engaged by the management. For purpose of payment, they were projected as contractor's labours. That coal industry is not schedule industry under Section 2(g) of M.W.Act. the workers were entitled to NCWA wages and not minimum wages. Only certificate holders of management personnels were competent to supervise work in the mine and not the contractors. There was absolute control and supervision of management over the work of the labours. Ist party Union prays claim of workman be allowed.

9. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the claimantsShivkumar and 21 others name appearing in list with order of reference were employees of the SECL and contractors were camouflage?	Claimants/ workmen are employees of management of SECL and contractor were shown by paper arrangement/ camouflage.
(ii) Whether the action of the management of Rajnagar Sub Area/ Opencast Mines of Hasdeo Area of SECL in denying the payment of wages as demanded by the Union and not regularizing Shri Shiv Kumar and 21 others ( as per list enclosed) is justified?	In Negative
(ii) If so, to what relief the workman is entitled to?"	As per final order.

### REASONS

10. Point No.1- The term of reference pertains to denial of NCWA wages and regularization of Shri Shiv Kumar and 21 others shown in the list annexed with order of reference. Management has filed application for better particulars. Ist party has produced particulars of the workers giving name, father's name, age, caste, identification mark, present address, date of engagement with photo affixed. Identical affidavit of Smt. Sukhanti Bai widow of Indal, Smt. Sarita Singh widow of Lallu Singh, Shri Chhotelal S/o Shri Harmangal Singh have been filed supporting claim of workmen, all of them were cross-examined. Shri Sukhwanti bai in her affidavit of evidence has stated that her husband and other workmen were working at Rajnagar open cast mine, Bellas siding during 1983 to 1986 and Rajnagar from 1986 to 1989. Her husband was working in siding- cutting wagon, loading, joining the wagons, cleaning and breaking coal in small pieces, work of maintenance. Similar statement is made in affidavit of Smt. Sarita Singh W/o Lallu Singh,Chhotelal S/o Harmangal Singh. In their cross examination, work done by Indal, Lallusingh, Harmangalsingh has not been shattered. Sukhanti bai in her cross says she got prepared her affidavit and she knows its contents. Sarita Singh in her cross examination says she was married in 1986, her husband died in 1995. Her husband was working in Rajnagar. Documents about working of her husband are not produced. Shri Chhotelal in his cross examination says in his affidavit, he has made averments about working of his brother while he was accompanying his brother, he was of 15-16 years of age. He claims ignorance that his brother was working with the contractor. In his further cross examination, he says that permission was required for entering the mine. Without permission, no body can enter in the mine. He denies that he deposed false that he accompanied his brother.

11. Ist party also filed affidavit of evidence of Shri Shiv Kumar S/o Bhondal, Ramcharan S/o Shri Netlal, ShriNanku S/o Laxman, Shri Chhotelal S/o Rajkumar, Shri Premlal S/o Dhanushdhari, Shri Sonsai S/o Mathau, Shri Samaylal S/oArjun, Shri Lalman S/o Charku, shriRamPrasad S/o Maiku, Kumarishantibai S/o Late Udairam, Shri

Baldhari Singh S/o Dhanushdhari, Shri Amir Singh S/o Dhanushdhari & Shri Chandradev S/o Tehlooram but they did not appear for cross examination.

12. Shri Shiv Kumar Bhondal and RamcharanNetlal filed affidavit of evidence that they and other claimant workers were working at Bella Siding from 1983 to 86 at Rajnagar 7/8 incline from 1987 to 1989. The place of their working is covered under Section 2(1)(j)(vi) of Mines Act. Their work is covered as Mining job. They were doing work of separating wagon from rack, taking wagons to the loading point, joining loaded wagons, shunting, cleaning line, breaking coal by hammer into small pieces. That claimants Ramkripal S/o Harmangal Singh C.No.4, Sukhlal s/o Mithailal C.No.5, Lallusigh S/o Kamta Singh C.No.16 have died. Shri Udairam S/o Shivcharan C.No.15, Shri Sohan S/o Budhai C.No.11 also died and they were engaged by colliery management during 1983 to 1986, payment was made directly to them, in 1987 to 89bogus contractor was shown at the time of payment. Contractor was seen only on the day of payment. After 1986, the officers of the management shown payment through contractor, their signatures used to be obtained on plain paper. They being illiterate could not know its contents. That ChandradevTehlura C.No.6, RamcharanMahipal C.No.7, Shri Sarvan Kumar C.No.8, Shri Amir Singh S/o Dhanushdhari C.No.18, Shri Mahabir S/o Dhanushdhari C.No.19 are given employment by the management. that contractor was not holding licence. The establishment was not registered under CL(R&A)Act. Their attendance was marked by attendance clerk. Siding Incharge was giving instructions to them about the work. They were working under direction of management, their services were terminated in 1989. Shri Shiv Kumar in his cross examination says he is illiterate. He joined Union in 1983, he was unable to tell name of Union. He was paying Rs.40,50 as membership contribution in a year. He had come searching employment, he was engaged by counter clerk but unable to tell his name, appointment letter was not given to him, he was not interviewed. They were doing work of breaking coal into pieces, line supply, loading wagon to point. He did not have certificate about his working. He was engaged by SECL, he was not engaged by contractor. Shri Naresh Babu was giving instructions for work. In his cross he says Sukhlal andPremlal died, Chandradev,Amarsingh and his brother total 4 persons got employment, they were interviewed. He was engaged by contractor Mahesh Singh, Veerendrasingh, Anil Singh and Ranjit Singh. Work of cleaning was given to the contractors. Payment was made at counter and not by the contractors. They were getting payment every 15 days or at end of the week on daily wage basis. Their signatures were obtained on plain papers. He was unable to tell name of attendance clerk. Shri Naresh was siding Incharge. Siding Incharge and Babu Brij Kishore and Veerendra were giving instructions for work. Manager was not telling them work. His further cross shows that he had met with accident and compensation Rs.32,700 was paid by the management.

13. Shri Ramcharan in his cross says during 1983 to 1987, he was working as labour. He was doing work of cutting rack and taking to siding point. Loading, cleaning line, taking wagon from loading point. That 5-6 workers have died. He joined membership at the time of raising dispute. He was called on work by Manager. At that time, he was working on road. Manager told him he should receive the amount what he was getting. Manager had engaged him on work. He denies that he was engaged by contractor. He has no certificate about his working or engagement by the Manager. During 1987 to 1989, Mahesh Singh was making payment. Virendra Singh, Anil Singh, Ranjit Singh are not contractors, they are labours. Mahesh Singh and those persons are from same family. That they were doing work of maintenance. He claims ignorance about contract between Mahesh Singh and management.

14. Turning to the evidence of management's witness, RamcharanMahipal in his affidavit of evidence stated that he was employed as land oustee in 1991. He remained absent for his cross examination. The evidence cannot be considered.

15. Affidavit of evidence of management's witness Shri Y.N.Singh is devoted on the point that claimant were not appointed following recruitment rules of coal industry. That work of civil nature and temporary work are being done through contractors. That work of establishment of township, construction of buildings, road, drainage etc are done through contractors. Work of removal of ash, cleaning and maintenance of colliery premises are also awarded to the local contractors. Claimant Shiv Kumar and 21 others were never engaged by management of SECL. That contractor Mahesh Singh, Birendra Prasad Singh, S.R.Mehta and others were given contract after tendering and issuing work orders. There is no employer employ relationship. Management never paid wages to the claimants. Management not taken work from claimants at any time. Labours of contractors are provided treatment in colliery hospital etc. In his cross examination, Shri Y.N.Singhsays he was posted at Rajnagar Open cast from 88 to 2013. During his period, the workers connected with the dispute were working through contractors. He was unable to tell when the workers were disengaged, he had not seen payment of wages made to the workers, at what rate payment was made. Till 1989, work was carried in blast siding. Thereafter the work at Rajnagar siding was carried. Rack was loaded every day at both the sidings. The contractor's labours were doing work of cleaning line. That work of siding maintenance comes under sales department. On question put to the witness that work of cleaning, billing should be done from civil department. He replied that work was done as per directions of Area Manager. Witness further explained that work of siding maintenance pertains to cleaning the coal falling at the time of loading of rack so that rack doesnot go out of track. He was unable to tell whether contractors Anil Singh, Ranjit Singh and Birendra Singh were from one family.

16. Management's witness Shri Sarwan Kumar in his affidavit of evidence says since 1991, he is appointed by SECL after acquisition of his land. Prior to his appointment in 1991, he was working under contractor Mahesh Singh at Rajnagar OC on daily wages. In his cross examination, this witness says he was working along with workers connected with the dispute. Work at blast was carried from 1983 to 1986, at Rajnagar from 1986 to 1990. Attendance was marked by Mahesh Singh. Shiv Kumar was working with him. Shiv Kumar had suffered injury to his leg. His leg was amputated. H was appointed after acquisition of his land. Payments were made by contractor.

17. Management's witness SatyawanTripathi filed affidavit denying employer employee relationship that management did not pay wages to the claimants, they were not engaged by management. management had no control over contractor's labours. In his cross examination, this witness says he was working in Rajnagar Mine during 1984 to 1992 in mines department. Work of Raj Nagar Open Cast siding was looked after by other persons. it is clear from his evidence in cross examination that he has no knowledge about work at Rajnagar sidings.

18. Management's witness R.N.Roy filed affidavit of his evidence denying employer employee relationship. That the work of civil nature and temporary work are being done through contractors. That the work of establishment of township, construction of buildings, roads, drainage etc are done through contractors. Shiv Kumar and 21 others were never employed by the management. That 3 workers at Sl.No.4,5,16 died, 5 workers at Sl.No.6,7,8,18 & 19 are given employment in SECL. Management had no control or supervision on contractor's labours. From his evidence, documents M-1 to 41 are admitted in evidence. Witness R.N.Roy in his cross examination says he was working as surveyor at Rajnagar Mines. At Rajnagar mines, there were 2 sidings- Bijuri siding and Rajnagar Open Cast Siding. It is possible that the workers connected with dispute were working at both the sidings. He admits that the work of siding pertains to sale department. From siding, coal is transported for sale. His work related to survey as provided under Section 49 of Mining Act. He denies that siding is part of coal mines. That at blast siding & open cast, coal was loaded every day during 1986 to 1989. Coal was loaded at Rajnagar open cast from 1986 to 1990. Loading of coal was supervised by contractors. The attendance of labours was maintained by the contractor. The payments were made by contractor and not by SECL. Coal from CHP was sent to Amarkantak after tender notice, no agreement was executed. Work order were issued.

19. The documents proved from evidence of this witness Exhibit M-1 to 41 are tender notices, work order and office note for approval of tenders. Work orders M-9, 4,22,24,38,39 bears signatures of the contractors. Shri Mahesh Singh, Anil Singh and Ranjit Singh. The tender notice as well as work order shows nature of work, cleaning and maintenance of siding at Rajnagar. The tender amount is shown between 9999, 10,000, 15,000 etc. The rate of contract is also mentioned on tender notice. Though 2<sup>nd</sup> party has pleaded in Written Statement that the payments made by contractors to its workers were attested, any documents about payments made by the contractors to workers are not produced. As per order dated 31-2-15, learned counsel for management had agreed to produce registration certificate of establishment and contractor's licence, those documents are not produced.

20. At the time of argument, Shri Nathulal Pandey pointed out my attention that in reply filed before AL by management, document P-2 is working of claimants workers was admitted and it was explained that miscellaneous mazdoors performing unskilled temporary nature of job in non-prohibited category was done by the claimants. Shri Nathulal pointed out my attention to section 2(1)(j)(vi). It defines mines means any excavation where any operation for purpose of searching for or obtaining minerals has been or is being carried on and includes all adits levels planes machinery works, railway tramways and siding in or adjacent to and belonging to mine. Circular of 1975 at P-6 prohibits employment of contract labour in raising cum selling of coal.

From above provisions, it is clear that the work of maintenance of sidings and other related work including breaking of coal is certainly the mining work. Shri N.L.Pandey also pointed out my attention to nomenclature job description and categorization of coal employees. At Sl.No.17. Shunting is mentioned, its job description is workman employed in moving wagon at colliery sidings.

My attention is also drawn to Para 11.5.0 of NCWA-IV. It provides industry shall not employ labour through contractor or engage contractor's labour on jobs of permanent and perennial nature. As per clause 11.5.1 of NCWA IV, engagement of contractor workers in perennial nature of work has been prohibited. The documents Exhibit M-1 to 41 are of tender notice and work order of contractors or work completion certificates. Registration certificate or licence of contractor are not produced. The working of claimants workman was not disputed. In reply submitted before ALC, document P-2. Even management's witness Y.N.Singh in para 14 of his cross examination has admitted that claimants were working at Rajnagar open cast mine.

21. Shri N.L.Pandey relies on ratio held in case between-

General Manager, Oil and Natural Gas Commission, Silchar versus Oil and Natural Gas Commission Contractual Workers Union reported in 2008(12)SCC-275. The present case is not for regularization simpliciter such as in the case of an adhoc or casual employee claiming this privilege. The basic issue in the present case is the status of workmen and whether they were employees of ONGC or of a contractor and in the event they were employees of

former a claim to be treated on a par with other such employees. This was the basic issue on which the parties went to trial, notwithstanding confusion created by the ill worded reference.

In para 19 of the judgment, their Lordship discussed analysis of the case discussed above shows they fall in three classes (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/ court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered, (ii) where the contract was found to be a sham and nominal, rather a camouflage in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself.

In case between Secretary, HSEB versus Suresh and others reported in 1999(3)SCC-601. Their Lordship held on facts contractor found only to be a name leader and that there was no genuine contract with him. In such circumstances, High Court rightly lifted the veil and held the said Safaikarmcharis to be employees of the Board and therefore entitled to reinstatement.

In case between Hussainbhai versus the Alath Factory Tezhilali Union and others reported in AIR-1978-SC-1410. Their Lordship held where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is in fact the employer. He has economic control over the workers subsistence, skill and continued employment. If he, for any reasons, chokes off, the worker is virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relation ex contractu is of no consequence when on lifting the veil or looking at the conspectus of factors governing employment, it is found though draped in different perfect paper arrangement that the real employer is the management not the immediate contractor.

In case between Bharat Heavy Electricals Ltd versus State of UP and others reported in 2003(6)SCC-528. Their Lordship dealing with employer employee relationship contract labour. Test of control engaging workmen through intermediary but maintaining record of attendance and supervising their work through own employees. Lifting the veil or looking at the conspectus of factors governing the employment held involvement of the direct contractor was merely figurative and sham. Failure to produce record alleging they were not available, their Lordship held inference was rightly drawn.

In present case, 2<sup>nd</sup> party has not produced documents Registration Certificate, contract licence, therefore it could be presumed if those documents would have been produced certainly those documents would have been against the management. My attention is pointed out by Shri N.L.Pandey to certificate issued by DGMS of attendance of labour employed by contractor is not recorded. It is contravention of provisions of Mines Act 1952 and Mines Rules 1955. It is therefore necessary that attendance of all persons including those employed by contractors should be recorded in prescribed attendance register.

22. Shri A.K.Shashi relies on ratio held in case between-

Deenanath and others versus National Fertilisers Ltd and others reported in 1992(1)SCC-695. Their Lordship held question as to necessity or bonafides of employment of contract labour in the establishment concerned. Question as to necessity or bonafides of employment of contract labour can be referred to as an industrial dispute and Labour Court can give appropriate directions in the matter of principal employer. That non-compliance of Section 7 & 12 of CL(R&A)Act is penal provision for which reference may be made to Section 23 & 25 of the Act.

Reliance is also placed on General Manager, OSD Bengal Nagpur Cotton Mills, Rajnandgaon versus Bharat Lal and another reported in 2011-I-LLJ-321(SC). Their Lordship did not sustain findings of Industrial Court that person concerned direct employee of cotton mills and not of contractor. Their Lordship held that 2 well recognized test to find out whether an employee was contract labor or direct employment or through contractor.

In present case, though 2<sup>nd</sup> party management has alleged that work was given to contractor, documents Exhibit M-1 to 41 are produced are tender notice and work orders application for impleading contractor was opposed by Ist party. Contractor has not been impleaded but statutory documents w.r.t. contractor labours required to be maintained by the management are not produced. Payment sheets and work completion certificates are also not produced. Therefore evidence on record clearly shows that workmen who were working with the management was only camouflage. For above reasons, I record my finding in Point No.1 in Affirmative.

23. Point No.2- In view of my finding in Point No.1 Ist party workman were employees of the management of SECL and contractor was camouflage. Workmen were engaged on perennial nature prohibited under clause 5.1.0 of NCWA-IV. The term of reference pertains to non-payment of NCWA wages and denial of regularisation. Evidence on record clearly shows that claimant were working from 1983 to 1989. Their services were terminated in 1989. Violation

of Section 33 of ID Act cannot be accepted as the reference order is issued on 17-3-93. The reference proceeding was not pending before this Tribunal at the time of termination of services of claimants.

24. Shri A.K.Shashi for management submits that as services of Ist party claimants are terminated, claim for regularization cannot be considered. It is also argued that the workman have not proved completion of more than 240 days continuous working and therefore relief for reinstatement cannot be allowed. Shri A.K.Shashi on the point relies on ratio held in case between-

In case between Surendra Nagar District Panchayat versus Dahyabhai Amarsingh reported in 2005(8)SCC-750. Their Lordship dealing with Section 25-F,B, workman to claim protection under Section 25-F of ID Act facts must be proved that their existed relationship of employer employee, is workman under Section 2(s) of ID Act. Establishment in which he is employed is industry within meaning of Act, he has put not less than one year continuous service.

Bhavnagar Municipal Corporation and others versus Jadeja Govubha Chhanubha and another reported in 2015(2)SCC(L&S)-513. Their Lordship dealing with proof of continuous service held burden to prove such continuous service lies on workman. On facts held respondent on basis of certificate issued by officer proved that he completed 240 days continuous service.

In present case in P-2, reply before AL, engagement of workman was not disputed. Contractor is found only paper arrangement. Management has not produced documents about payment of wages to workman. Payment of wages and attendance required to be maintained as per DGMS directions. Evidence of workman deserves to be accepted that the workman had completed 240 days continuous service.

25. On the point Shri N.L. Pandey relies on ratio held in case between-

Steel Authority of India Ltd. and others versus National Union Waterfront Workers and others reported in 2001(7)SCC-1. In Para 68 of the judgment, their Lordship held it is common ground that consequent of prohibition notification under Section 10(1) of CL(R&A)Act, prohibited employment of contract labour is neither spelt out in Section 10 nor indicated anywhere in the Act.in our view the following consequence follow on issuing a notification under Section 10(1) of the CLRA Act-

- (1) Contract labour working in the establishment concerned at the time of issue of notification will cease to function
- (2) The contract of principal employer with the contractor in regard to the contract labour comes to an end.
- (3) No contract labour can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter
- (4) The contract labour is not rendered unemployed as is generally assumed but continues in the employment of the contractor as the notification doesnot sever the relationship of master and servant between contractor and contract labour.
- (5) The contractor can utilize the services of the contract labour in any other establishment in respect of which no notification under Section 10(1) has been issued where all benefits under CLRA Act which were being enjoyed by it will be available.
- (6) If a contractor intends to retrench his contract labour, he can do so only in conformity with the provisions of ID Act.

Shri A.K.Shashi placed reliance on ratio held in case between Steel Authority of India versus Union of India and others reported in 2006-12SCC-233. Their Lordship discussed a definite stand was taken by employee that they had been working under the contractors, it would thus in our opinion not lie in their mouth to take a contradictory and inconsistent plea that they were also the workmen of the principal employer. To raise such a mutually destructive plea is impermissible in law.

In present case, the pleading in statement of claim are that they were working in Rajnagar siding. However to deprive the wages under NCWA, they were shown as employees of contractor. In my considered view the pleadings in statement of claim and evidence are not inconsistent. Ratio in above cited case cannot be applied to case at hand.

Shri A.K.Shashi also relies on ratio held in case between employees in relation to management of "D" Ropeways of Bharat Coking Coal Ltd., Dhanbad versus workmen represented by Secretary Bihar Colliery Kamgar Union. Dhanbad reported in 2010(2)LLN-84. His Lordship held order of Tribunal appears to be based on the fact that these people were working for a number of years and therefore the job is of permanent nature and they were under the control and supervision of the management. such finding of the Tribunal cannot be sustained at all.

In present case under Section 2(1)(j)(vi) as workmen were engaged for mining activities under clause 11.5.1 of NCWA-IV engagement of contractual labour on perennial nature of work is prohibited. As per circular of 975, contract labour employment in raising and sale of coal is prohibited. Ratio held in the case cannot be applied to case at hand.

Shri A.K.Shashi relies on ratio held in case between Oshiar Prasad versus employers in relation to management of Sudamdih coal Washery of BCCL, Dhanbad reported in 2015-I-LLJ-513(SC). Their Lordship held no enquiry can be made on question not specifically referred to Tribunal while answering reference. However their Lordship allowed claim for retrenchment compensation.

26. Shri N.L.Pandey relies on ratio held in case between Harinandan Prasad and another versus employer in relation to management of FCI and another reported in 2014-II-LLJ-54(SC) held that Tribunal can create new rights and obligations. Reliance is also placed in case between Rajkumar versus Director of Education and others reported in 2016(6)Scc-541. In support of argument that as management has not adduced evidence about gainful employment, full backwages be allowed.

27. Shri N.L.Pandey also submits that some workmen are dead, their dependents have filed affidavit of evidence, compassionate employment provided under clause 9.4.0 of NCWA be allowed. Reliance is placed in case between Mohan Mahto versus Central Coal Field Ltd. reported in 2007(8)SCC-549. The term of reference doesnot include claim for compassionate ground. No enquiry can be made about claim for compassionate appointment in view of ratio held in Oshiar Prasad case.

28. Evidence on record is clear that the claimants were employed in Railway siding, Rajnagar during 83 to 89. In view of my finding in Point No.1 they were employees of 2<sup>nd</sup> party, contractor was camouflage. Considering period of 6 years working, compensation Rs. One Lakh to the LR's of deceased employee would be appropriate. Shri N.L.Pandey submits that stoppage of service in violation of Section 25-F ID Act relying on ratio held in Jaipur Zila Sahakari Bhoomi Vikas Bank versus Ram Gopal Sharma and others reported in 2002(2)SCC-244. Workman be deemed in continuous service and entitled to consequential benefits. The claim for full backwages for other claimants relying in ratio held in ONGC Ltd versus Petroleum Coal Labour Union and others reported in 2015-II-LLJ-257(SC) by Shri N.L.Pandey. though dispute is raised for the year 1993, after workmen were terminated in 1989 dispute was not punctually prosecuted, claim for fullbackwages cannot be allowed. Other claimants are not examined. Their details about working, no evidence is adduced. Without considering age and other details of workman, claim for reinstatement with backwages cannot be allowed. Considering evidence of workman Shri Shiv Kumar Bhondal and RamcharanNetlal and my finding on point that as they are employees of management , that other workers were also working with them. That Shri Chandradev Tehlura, Ramcharan Mahipal, Shri Sarvan Kumar, Shri Amir Singh S/o Dhanushdhari, Shri Mahabir S/o Dhanushdhari are employed in the management , claim w.r.t. above claimants cannot be allowed. As other workman are employees of 2<sup>nd</sup> party management in view of my finding in Point No.1, they are entitled for NCWA wages and absorption in service. However considering reference was not punctually prosecuted, there was delay in prosecuting claim under reference, in my considered view those works deserves to be absorbed with 20 % backwages from date of reference. Point No.2 is answered in Negative.

29. In the result, award is passed as under:-

- (1) The action of the management denying the payment of wages as demanded by the Union and not regularizing Shri Shiv Kumar and 21 others is illegal.
- (2) 2<sup>nd</sup> party is directed to absorb claimants Shri Shiv Kumar S/o Bhondal, Ramcharan S/o Netlal, Premlal Dhanushdhari, Lalman S/o Charku, Nanku S/o Laxman, Ramprasad S/o Majhku, Anil Kumar S/o Rajeshwar Singh, Sonsai S/o Mathau, Chhotelal S/o Ramkumar, Samaylal S/o Arjun, Mithailal S/o Lalla & Indal S/o Laxman with continuity of service with 20 % backwages from date of reference.
- (3) The LR's of the deceased workman Shri Ramkripal S/o Harmangal Singh, Sukhlal S/o Mithailal, Lallu Singh S/o Kamta Singh, Shri Udairam S/o Shivcharan & Shri Sohan S/o Budhai be paid compensation Rs. One Lakh.
- (4) Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2294.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एस. ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण-सह-श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 41/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.09.2017 को प्राप्त हुआ था।

[सं. एल-22012/198/2004-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 25th September, 2017

**S.O. 2294.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the management of M/s. S.E.C.L. and their workmen, received by the Central Government on 01.09.2017.

[No. L-22012/198/2004-IR (CM-II)]

RAJENDER SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/41/2005

Secretary,  
M.P.Koyla Khan Mazdoor Union,  
Sadak Dafari, Daman Hill Road,  
NCPH Colliery, PO Haldibadi,  
Korea, Chhattisgarh

...Workman/Union

#### Versus

Chief General Manager,  
Chirimiri Area of SECL,  
PO Chirimiri,  
Korea (CG)

...Management

### AWARD

Passed on this 7<sup>th</sup> day of August, 2017

1. As per letter dated 24-5-2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/198/2004-IR(CM-II). The dispute under reference relates to:

“Whether the action of the CGM, Chirimiri Area of SECL in terminating 4 gotamakers from services w.e.f. 31-10-1996 instead of regularization is legal and justified and Whether the action of the management in denying NCWA-I to NCWA-II wages as per order of CGIT dated 27-0-84 is legal and justified? If not, to what relief the concerned workmen are entitled?”

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted by Ist party Secretary MPKMS. Case of Ist party is that Union is registered under Trade union Act bearing No.1147, Registration No. 2707. That the claimants Sobran Category I unskilled under Central Wage Board for coal Mining Industry at Bartunga colliery on 30-1-1973. They were continued in employment of the colliery till 31-10-96. They worked for 23 years in the colliery. That after nationalization of Coal Mines Act 1973, it was decided not to terminate any of the employees. In view of it all 4 employees were absorbed in Bartunga Colliery as gota makers. That Ist NCWA came into operation w.e.f. 1-1-1975, 2<sup>nd</sup> NCWA on 1-01-1979, wages of Category I workers were enhanced from existing Rs.5.75 to Rs.17.70 per day to Rs. 9.69 per day. Gotamakers were paid Rs. 25 to 27 per day after revision of wages. That the employees working in coal industry including clay cartridge makers were placed in Wage Board for coal mining. The sincere duty of preparing gota unless gota/ cartridge is prepared, no blasting can be made. That except colliery, area, in all other areas of SECL, all clay cartridge workers working since 1973 were absorbed as regular workers in Category I. benefit of NCWA was not given by management to them. Gotamakers were discriminated while absorbing in service. Claimants were singled out.

3. In June 1982, dispute raised by workers claiming statement of Category-I as per Central Wage Board. In view of said demand, management was annoyed to deprive them benefit. Management decided to place them in name of gang distributing manpower. Said contracts was resisted on ground of discrimination. That even after distributing

manpower of gota makers, their service conditions were not changed. The gota makers were performing same duty. Management unilaterally terminated their service on 31-8-96. They were not paid retrenchment compensation, notice was not issued. They were not paid notice pay. All of them have completed 240 days continuous service. The services were not regularized after completion of 240 days. As per definition of cartridge mazdoors, those formerly designated as Goli Matti or Mud Pallot Mazdoors will hereinafter be known as Clay Cartridge Mazdoors. That their services are terminated in violation of Section 25-F of ID Act.

4. Ist party Union further submits that proceeding under Section 33(C)(2) ID Act, C/347/81 was filed for difference of wages. This Tribunal vide order dated 27-0-84 directed management to pay difference of wages. Management not paid said wages to gota workers. Secondly application under Section 33(C)(1) was filed before RLC. RL passed order dated 17-5-04 directing management of SECL to pay difference of wages. Management feeling aggrieved challenged said order before filing Writ Petition No.3537/05. Matter is pending. On above contentions, claimant prays for regularization/ reinstatement with consequential benefits.

5. 2<sup>nd</sup> party management filed Written Statement opposing claim of Ist party. 2<sup>nd</sup> party submits that the claim is highly belated. Claimants were terminated on 31-10-97. Dispute is raised in 2005 is not tenable. Union who sponsored the reference has no locus to raise said dispute. The claimants are not members of the Union. Union is not functioning in the industry. Management denies claim for wages as per NCWA-I,II order dated 27-10-94 passed by this Tribunal. Case No is not given. Term of reference is not vague. That once order has been passed by the Tribunal, Tribunal becomes functus-officio., mode of execution is provided. Again no dispute can be raised on the same matter. The case filed by Supra S/o Agari and 11 others by koylaShramik, the dispute was closed. Same dispute is raised after 10 years. SECL is subsidiary of coal India, it has recruitment policy. The vacancies required to be notified to Employment Exchange and after interview, the selection is to be made by the committee. The claimants were not selected following such recruitment policy. That claimants were not selected following such recruitment policy. That claimants are not appointed by management. there is no employer employee relationship. Management used to award contract for supply of mud clay for mining purpose. Rates were settled. The contractor undertakes to supply mud at fix rate. The supply of mud is immaterial according to their convenience. Work of making mud on contract is not prohibited under Contract Labour (R&A)Act. As there is no master servant relationship existing, provisions of ID Act are not applicable. That claimants SubranAgarsai and 13 others were not employed by the management. reference is not tenable. The claimants were not engaged as gota makers by management. it is denied that services of claimants were terminated on 31-6-96. It is denied that claimants were working for 23 years as gota makers. It is denied that there is any particulars of wages for payment of supply to gota makers. Claimants are not entitled to the monthly benefits. It is submitted that the persons working as gotamakers are settled by management in 1989, specific terms with the gota makers who were not more than 45 years of age and less than 18 years on 1-2-89 physically fit and medically fit be given preference for employment. Their claim would have been considered by management in 1983. Claim of Ist party is false, fabricated. Claimants were never engaged by management. 2<sup>nd</sup> party further submits that particulars of the persons employed in other areas are not given. Management cannot offer its comments. Violation of provisions of ID Act has been denied. 2<sup>nd</sup> party submits that claimants are not entitled to any relief.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the CGM, Chirimiri Area of SECL in terminating 4 gota makers from services w.e.f. 31-10-1996 instead of regularization is legal and justified ?	In Affirmative
(ii) Whether the action of the management in denying NCWA-I to NCWA-II wages as per order of CGIT dated 27-0-84 is legal and justified?	Matter was already decided, has become redundant
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

7. Point No.1 The term of reference pertains to legality of denial of wages and termination of services. Management has denied employer employee relationship. Even functioning of Union has been denied. The dispute was raised by Secretary, MP Koyla Mazdoor Union. Affidavit of evidence is filed by Smt.Rambai supporting contentions in statement of claim that claimants were working as gota makers. Affidavit of evidence was filed by Rambai, W/o Rampyari. However he did not turn up for cross examination. Said affidavit was not pressed. Smt. Vijiya Laxmi Soni

had filed her affidavit in support of claim of Ist party claiming to be Secretary of the Union. That claimants were engaged during 1978 to 1981. That they were continuously working at Bartunga underground colliery. Their services were terminated on 31-10-96. They were working 8 hours. That after completion of 190 days service, claimants were entitled for regularization, their services were terminated without notice. Retrenchment compensation was not paid. Notice was not served. The salary in lieu of notice was not paid. Her affidavit is also devoted about violating proceeding C/347/81 order passed by this Tribunal for payment of Rs.15 to the gota makers. The wages were not paid. Proceeding under Section 33(C)() was filed. RLC had passed order for payment of Rs.21,91,280 total Rs.32,52,280. Management has challenged said order filing Writ Petition. Matter is still pending. In her cross-examination, VijayLaxmi says she is member of the Union, she doesnot know name of the Union. She joined membership in 1962 whereas her age in affidavit is shown only 40 years. That she knows Secretary of Union who resides at Delhi. She doesnot know his name, doesnot know name of General Secretary. Union was closed. She is doing stitching work. That the employees were regularized after 5 years. She had not submitted application for service, she was unable to tell whether names of claimants were sent through Employment Exchange. They were not called for interview. Wages were paid by Mining Sirdar. Their attendance was not marked in the register. Hey were paid wages for the actual working days. They were continuously working for 5 years, they were not getting holidays, they were paid Rs.15/- for making 1000 gotas, they were getting more amount if more gotas were made by them. Considering age of Vijaylaxmi and she was not even able to tell name of Union and General Secretary, claim under reference, evidence of Vijay Laxmi Soni is far to be believed.

8. Management filed affidavit of Shri D.K. Goswami supporting contentions of management in Written Statement. That master servant relationship is not existing. The contractors were engaged for supply of material as per requirement. Management's witness also not produced documents about the contractors. In his cross examination, management witness says personally he is not acquainted with the claimants. He is aware about the process of gota making. It is used for explosion in underground mine. For explosion, hole is to be made and filled by gota before making explosure. Employees in coal mines are covered by NCWA. Documents are not produced as the claimants did not work in the mine. Copy of Appendix IV of Central Wage Board is produced. Work of clay cartridge is appearing at Sl.No.26. Exhibit W-1 is order passed by this Tribunal directing increased payment of Rs.15/- for making 000 gotas size 9 inch, 11 inch. Names of claimants are not appearing in Exhibit W-1 except Sobran S/o Agar Singh Exhibit W-2 is copy of petition in Writ Petition 43/00 directing Government to refer the matter within 3 months. Exhibit W-3 is copy of order of reference, W-4 is order passed by RLC dated 17-5-04 for payment of Rs.32,54,280/- . Admittedly the said order is challenged before Hon'ble High Court, claim under reference cannot be decided on the basis of order passed by RLC dated 7-5-04 for payment of Rs.32,54,280/-. Admittedly said order is challenged before Hon'ble High Court, claim under reference cannot be decided on the basis of order passed by RLC. As observed above, evidence of Vijay Laxmi is not worth reliance. Ist party has failed to establish that claimants were continuously working more than 240 days, their services were terminated violating Section 25-F of ID Act. Shri A.K.Shashi submits that the dispute is not tenable for latches and delay. Reliance is placed on ratio held in case between-

Indian Iron and Steel Company Ltd versus Prahlad Singh reported in 2001(1)SCC-424. Their Lordship held because of 13 years long delay, no relief would be granted.

In case between Assistant Executive Engineer, Karnataka versus Shivalinga reported in 2002-I-LLJ-457- 9 years delay was held fatal.

In case State of Punjab and others versus Chaman Lal Goyal reported in 1995-II-LLJ-679- 5 /2 years delay was found fatal. Legal position is settled if the dispute is belatedly raised, relief would be moulded. However in present case, evidence of Vijay Laxmi is not worth for reliance. Claim of Ist party cannot be established. With respect to claim for regularization, the evidence of Vijay Laxmi is not worth to rely. Shri A.K.Shashi relies on ratio held in case between-2010(2)LLN-184, 2006(2)SCC-716, 2007(5) SCC-317 needs no detailed discussion. Written notes submitted by complainant Pandey is by way of narrating the factual matrix. When evidence of Vijaylaxmi is not cogent and worth to place reliance, ratio held in the case Jasmer Singh Versus State of Haryana and another cannot be applied to case at hand. for above reasons, I record my finding in Point No.1 in Affirmative.

9. Point No.2- Claimants are claiming wages as per order passed by this Tribunal Exhibit W-1 directing payment of Rs.15/- for making 1000 gotas. Evidence of Vijay Laxmi is not worth reliance about working of claimants after order dated 24-0-84 was passed. The matter doesnot requires to be decided again. It is matter of execution after the claimant worked, issue has become redundant. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) The action of the CGM, Chirimiri Area of SECL in terminating 4 gota makers from services w.e.f. 31-10-1996 instead of regularization is legal and proper.
- (2) The claim of wages as per order dated 27-10-84 has become redundant.

(3) Workmen are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2295.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एस. ई.सी.एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 114/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.09.2017 को प्राप्त हुआ था।

[सं. एल-22012/311/2001-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 25th September, 2017

**S.O. 2295.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 114/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the management of M/s. S.E.C.L. and their workmen, received by the Central Government on 01.09.2017.

[No. L-22012/311/2001-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/114/2002

Shri Beni Ram Sahu, President,  
Chhattisgarh Swathantra Mazdoor Union  
Vill & PO Baradwar,  
Distt. Janigir Champa (Chhatt).,  
Janigir- Champa

...Workman

#### Versus

Sub Area Manager,  
SECL, Vill & PO Rajgamar Colliery,  
Distt. Korba (CG)

...Management

#### AWARD

Passed on this 4<sup>th</sup> day of August, 2017

1. As per letter dated 5-8-2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-22012/311/2001-IR(CM-II). The dispute under reference relates to:

“Whether the demand of Chhattisgarh Swathanthra Mazdoor Union for providing employment on compassionate grounds to Shri Domansingh, S/o Shri Puniram declared medically unfit by SECL is justified? If so, to what relief is Shri Domansingh entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/2. Case of workman is that his father Chouhan was working as Pump Khalasi in mine of 2<sup>nd</sup> party. Because of illness, he was declared unfit on 24-9-97. As per rules after employee declared unfit on medical ground, one dependent is entitled for employment. That mother of claimant Sukhmati was dead. Claimant claiming to be son of Puniram is eligible for appointment on compassionate ground. Puniram had submitted application for giving dependent employment to claimant Domansingh. Affidavit and concerned deed were submitted for appointment of claimant Domansingh on compassionate ground. However 2<sup>nd</sup> party management instead of allowing compassionate employment to Domansingh, appointed one Budhiari Bai who was not wife of Puniram. The repeated applications and representations submitted by claimant Domansingh for dependent employment were not considered. Budhiari bai who was not wife was illegally appointed by the management. Advocate M.S.Yadav issued registered notice on behalf of workman. It is reiterated that claimant Domansingh son of Puniram be allowed dependent employment instead of

appointing outsider. On such ground, claimant is praying for dependent appointment. Statement of claim is signed by President of Chhattisgarh Swatantra Mazdoor Union.

3. 2<sup>nd</sup> party management filed reply opposing claim of workman. 2<sup>nd</sup> party submits that it is registered under company's Act having registered office at Bilaspur. That clause 941 provides for dependent employment when the employ dies while in service or employment dependent of workman who is permanently disabled. Verbatim of Para 9.4.1, 9.4.2 are reproduced in the Written Statement. That Shri Puniram Chouhan was employed as Pump Khalasi at Raj Nagar colliery on 24-8-71. He submitted family particulars. As per the service excerpts family members of Puniram are given in Para 4 of the Written Statement - Wife Sukhmati, son Madan lal and Doman singh, daughters Baharria and Sudha Kumari, son Kartik Kumar, father Prithvi Chouhan and mother Sadhmati. That Sukhmati w/o Puniram died on 5-11-89. Puniram submitted options for LTC giving the particulars of his family that Budhiari bai was his wife. It is further reiterated that Puniram has stated during life time of his wife Sukhmati he had kept Budhiari Bai as co-wife as per rites in the society. He also filed affidavit that he had married with Budhiari bai. Puniram submitted option for LTC on 22-9-92. Budhiari bai was shown as his wife. That Puniram had submitted Budhiari bai as his nominee as per provisions of payment of gratuity rules. Puniram submitted application dated 26-8-00 that he was declared medically unfit and his wife Budhiarin Bai was provided dependent employment. Application was supported by affidavit. Accordingly Budhiari bai was considered for compassionate appointment. Puniram not submitted any application for dependent employment for claimant Domansingh therefore he couldnot be appointed as dependent of Puniram as per provisions of NCWA. All adverse contentions of claimant have been denied. It is reiterated that Budhiari bai was wife of Puniram. On his application, Budhiari bai was appointed on compassionate ground. Claimant is not entitled to appointment as dependent.

4. Budhiari bai was impleaded as 3<sup>rd</sup> party in the proceeding. She has cosntented that she is wife of Puniram. On application submitted by Puniram and affidavit, she was appointed on compassionate ground. She opposed relief claim by Domansingh.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the demand of Chhattisgarh Swathanthra Mazdoor Union for providing employment on compassionate grounds to Shri Domansingh, S/o Shri Puniram declared medically unfit by SECL is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	Claimant is not entitled to any relief.

### REASONS

6. Point No.1- The term of reference pertains to demand of Union for providing employment on compassionate ground to claimant Domansingh. However Union or claimant Domansinghdonot participate in the reference proceeding. Evidence of Ist party was closed on 10-2-2015.

7. Management filed affidavit of witness Lalit Kumar supporting whole contentions in Written Statement filed by the management. management's witness remained absent for cross-examination. His evidence could not be considered.

8. Budhiari bai filed affidavit of evidence supporting claim that she was wife of Puniram. After Puniram was declared medically unfit on 24-9-97, he submitted application on 16-8-00 for her appointment on compassionate ground. She was appointed on compassionate ground on 28-8-00. From her evidence, documents I-1, I-II are admitted in evidence. Ist party remained absent and failed to cross-examine her. Her evidence remained unchallenged. No evidence is adduced in support of claim. Therefore I record my finding in Point No.1 in Negative.

9. In the result, award is passed as under:-

- (1) The demand of Chhattisgarh Swathanthra Mazdoor Union for providing employment on compassionate grounds to Shri Domansingh, S/o Shri Puniram declared medically unfit by SECL is not proper and legal.
- (2) Shri Domansingh is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2296.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एन. सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 69/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.09.2017 को प्राप्त हुआ था।

[सं. एल-22012/30/2015-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 25th September, 2017

**S.O. 2296.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the management of M/s. N.C.L. and their workmen, received by the Central Government on 01.09.2017.

[No. L-22012/30/2015-IR (CM-II)]

RAJENDER SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR****NO. CGIT/LC/R/69/2015**

Secretary,  
Bhartiya Koyla Khadan Shramik Sangh,  
Officer Parmar Bhwan, PO Amlore Project,  
Distt. Singrauli,  
Singrauli

...Workman/Union

**Versus**

Chief Manager (P),  
NCL Headquarter Singrauli,  
Singrauli

...Management

**AWARD**Passed on this 7<sup>th</sup> day of August 2017

1. As per letter dated 16-7-2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/30/2015-IR(CM-II). The dispute under reference relates to:

“आवेदक कर्मकार श्री अश्वनी कुमार पाण्डेय को महाप्रबंधक अम्लोरी के अनुमोदनोपरान्त महाप्रबंधक अम्लोरी (खच्च) अम्लोरी परियोजना द्वारा से बर्खास्तगी आदेश देना क्या न्यायसंगत है? यदि नहीं तो कर्मकार क्या अन्यतोश पाने का अधिकारी है?”

2. After receiving reference, notices were issued to the parties. Statement of claim is filed by Union and workman Ashwin. Case of workman is that he was working as UDC with 2<sup>nd</sup> party No.1. workman was dismissed from service vide order dated 13-8-12. It is alleged to raise that 2<sup>nd</sup> party No.1 is incompetent to impose labour punishment therefore order of punishment dated 13-8-12 deserves to be set-aside. Before dismissal of workman, 2<sup>nd</sup> party had issued chargesheet dated 15-12-06. Chargesheet deserves to be quashed as chargesheet was issued by incompetent authority. Without considering reply to the chargesheet, DE was initiated against workman. Enquiry conducted by Enquiry Officer is not legal. Workman was not given full opportunity for his defence. Defence Assistant was not allowed. Documents were not supplied on the basis of which the chargesheet was issued. Charges levelled against workman. In absence of documents, witnesses of management could not be effectively cross-examined. Workman did not get opportunity to produce his evidence. Dr.Sanial was not called in enquiry to prove his signature on the documents. That findings of Enquiry Officer are not supported by evidence. Workman had not accompanied is mother Indranath Pandey to go to Bhopal for treatment. Everytime his father was going with his mother for treatment and checkup to Bhopal. That the bills and cash memos were handed over to him by his father Ramlakhan Pandey. That the punishment of

dismissal imposed against workman is harsh and excessive. Workman was appointed as clerk on 31-12-89. He was promoted on 25-10-10 as UDC. Workman prays to set aside punishment of dismissal imposed against him.

3. 2<sup>nd</sup> party filed Written Statement opposing claim. 2<sup>nd</sup> party submits that the workman Ashwin Pandey was working as Sr.clerk at Almohri project of NCL. That his mother Indramati was cancer patient. She was referred to Jawaharlal Nehru Hospital, Bhopal for better treatment. That workman submitted false and fabricated documents about treatment availed by his mother. Huge amount has been reimbursed against those fake bills. That Indramati Pandey, mother of workman was referred 31 times to Bhopal cancer Hospital. His mother went to Bhopal 5 times, she was admitted 17 times in OPD, 9 times she did not go to hospital. Workman has received amount Rs.10,53,059/- producing false bills. Chargesheet was issued to him after report submitted by Dr. D.K. Saraswat. Workman submitted reply to chargesheet, his reply was found unsatisfactory. Management decided to conduct DE on the chargesheet. Enquiry was conducted on various dates from January 2007 to 24-4-07. Enquiry was adjourned as co-worker of workman was not present. On 7-2-07, workman denied charges against him. Statements of management's witness G.S. Pathak, Dr. Mahesh Prasad was recorded. All of them were cross-examined. Statement of workman was recorded, he was cross-examined. Enquiry Officer submitted report holding workman guilty of charges. After issuing show-cause notice and reply given by workman, punishment of dismissal was imposed against workman. Workman had challenged order of dismissal filing appeal. It is reiterated that charges against workman are proved in enquiry. If enquiry is held illegal, management requested permission to prove misconduct by adducing evidence.

4. Management further submitted that workman was holding responsible post of Sr.clerk. he committed fraud in the matter of treatment of his mother. Management provides medical facility to the workman and their family members. Cases are referred to Specialized hospital for special treatment. Workman produced false documents pertaining to availing treatment of his mother. His mother has not availed treatment. Such person is not entitled to be retained in public service. It is denied that punishment is imposed by incompetent authority. Workman is not entitled to add any authority. Order of reference prevail NCL is party to the dispute. That reply submitted the chargesheet was found unsatisfactory and enquiry was conducted. Workman was given full opportunity for his defence. There was no demand by workman for supplying documents during enquiry. Witnesses of management were cross-examined. Workman was given full opportunity for his defence. Punishment of dismissal is imposed for proved misconduct. 2<sup>nd</sup> party management submits workman is not entitled to any relief.

5. As per order dated 27-4-17, enquiry conducted against workman is found legal.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charges/ misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

7. Point No.1- As per order dated 27-4-17, enquiry conducted against workman is found legal. Question whether misconduct/ charges alleged against workman are proved needs to be decided from evidence in Enquiry Proceedings. Management produced record of enquiry Exhibit M-1 is chargesheet. Charges against workman pertains to his mother was referred for better treatment to Jawaharlal Nehru Cancer Hospital, Bhopal 31 times. She was admitted 5 times and received treatment in OPD 7 times. She had not attended 9 times. Workman submitted bogus bills fraudulently and received lakhs of rupees. Misconduct is alleged under clause 26.1 of standing orders. Exhibit M-2 is reply submitted by workman to the chargesheet. That he had not accompanied his mother to Jawaharlal Nehru Cancer Hospital, Bhopal. He was suffering mentally. His father Ramlakhan was accompanying his mother. He was satisfied with the treatment of his mother. He had not committed any fraud submitting bogus bills. Statement of management representative was recorded before Enquiry Officer. He has narrated charges alleged against workman that mother of workman suffering from cancer was referred for treatment to cancer hospital, Bhopal 31 times. The mother of workman was admitted in cancer hospital, Bhopal 5 times. She received treatment in OPD 17 times. Workman received amount of Rs.10,05,359/- from the bills submitted for treatment of his mother. That 9 times his mother was not admitted in Bhopal cancer hospital. That Vigilance from head office had enquired in the matter. That Director K.B., Pandya has conformed in writing document ME-1a. in Enquiry Proceeding statement of management's witness G.S.Pathak was recorded.

Statement of G.S.Pathak is devoted on the point that the bills submitted by workman and amount was paid are produced at ME-1 consisting of 315 pages. Dr.K.B.Pandey Director of Bhopal Cancer hospital written letter dated 12-7-06 ME-2. 2<sup>nd</sup> letter from Cancer Hospital Bhopal issued by Dr.K.B.Pandya ME-3 copies of those documents were supplied to workman and management both. As per letter dated 12-7-06 and oral enquiry made, mother of Ashwin incurred expenses of Rs.83,099/- for her treatment. As per document ME-1, workman had received huge amounts towards the bills submitted for treatment of his mother. As per ME-3, cancer Hospital Bhopal had verified the bills and explained that mother of workman was admitted in cancer hospital Bhopal from 28-12-01 to 12-1-02, 21-1-02 to 20-2-02, 6-5-02 to 8-5-02, 3-3-03 to 5-3-03, 16-9-03 to 26-9-03, mother of workman received treatment in OPD on 18-3-02, 25-3-02, 24-6-02, 25-9-02, 29-1-03, 14-7-03, 21-8-03, 23-4-04, 8-7-04, 11-10-04. On 14-2-05, 12-4-05, 3-5-05, 26-7-05 & 24-10-05 only attendant had come without patient. The bills were submitted and payment was made to workman besides above period. In his cross examination, Shri B.S.Pathak says he visited cancer Hospital Bhopal twice. First from 10-7-06 to 12-7-06 & 2<sup>nd</sup> from 2-8-06 to 5-8-06. In his further cross, he was unable to give information about his tickets and bills for travelling on above dates. Mr. Pathak in his further cross says Pandya Director of Cancer Hospital Bhopal and officer Mr. Joshi were contacted by him. Patient's record were checked by them. Dr.Sanyal who was working in Bhopal cancer hospital had left said hospital before their visit. Employees in cancer hospital were surprised to see their signatures on the bills. The signatures on bills were not matching with signatures on bills submitted by workman. That workman had received amount Rs.10,53,059/- from 2<sup>nd</sup> party. The inconsistencies with the amount is explained by Mr. Pathak that as per ME-2 dated 12-7-06, expenses for treatment of mother of workman was Rs.83,099/-. The details of exact amount received by workman could be obtained from the account department. The variation in signature could be seen from Page 21 to 28 of ME-1. In reply to Q.9 G.S.Pathak explained that Indravati Devi name of mother of Ist party workman was recorded in the Registration card and other papers of treatment. Evidence of G.S.Pathak that mother of Ist party workman was admitted in cancer hospital Bhopal for 5 times, he received OPD treatment 17 times. She did not attend cancer hospital Bhopal 9 times. That expenses for treatment for mother of workman incurred Rs.83099/- is not challenged in his cross examination. Evidence that workman received amount of Rs.10,53,059 is also not challenged.

8. Evidence of witness No.2 Mahesh Prasad is devoted on the point that he alongwith G.S.Pathak visited cancer hospital Bhopal during 10-7-06 to 12-7-06, 2-8-06 to 5-8-06. That Smt Indramati mother of workman receiving treatment in cancer hospital, Bhopal. As per record of hospital amount of Rs.83,099/- were spent for her treatment. Ist party workman had presented bills and received its amount. Shri G.S.Pathak from Head Office, Vigilance had collected record about treatment in hospital. In his cross examination, witness No.2 Mahesh says they had inquired the matter of payments incurred for treatment in cancer hospital. They had personally seen the record.

9. Statement of Ist party workman is recorded. In his statement before Enquiry Officer, he says that his mother was receiving treatment in cancer hospital Bhopal for about 6 years. His mother was cured for her illness. His mother was taken for treatment by his father. He had never accompanied his mother for treatment to cancer hospital Bhopal. After returning from Bhopal Hospital, his father was handing over bills, prescription etc. Being employee of the 2<sup>nd</sup> party, he was submitting those papers in the office. He has received amount of the bills. His father had submitted complaint on letter head of politician of Samajwadi party. In his cross examination, workman says he issued amount of bills through Bank accounts. That on 16-2-06, he had taken his mother for treatment to Dr.Ila Chatterjee. That he had not taken his mother to NSC for treatment. He was not accompanying his mother for treatment. His father used to accompany his mother. Father of workman is not examined as witness in Enquiry Proceeding. In reply to showcause notice M-5, workman claims that his father after returning from cancer hospital, Bhopal was handing over bills to him and as employee of 2<sup>nd</sup> party he was submitting those papers in the office and he was receiving bill amount. He handed over amount to his father. Father of workman is not examined.

10. As per letter dated 5-8-06 sent by Shri Pandya Director, amount of Rs.23,300 bill dated 31-1-01, Rs.40,000 under receipt dated 7-1-02, Rs.24,025/- bill dated 26-9-03, Rs.60,000 as per receipt dated 16-9-03, amount Rs.765 as per receipt dated 14-2-05, Rs.317 as per receipt dated 14-2-05 were received in the hospital. Mother of workman was admitted in hospital 5 times is shown. Details of OPD visits are given tallies with the evidence given by Shri Pathak. Enquiry Proceeding letter dated 22-7-06 sent by Chief General Manager to Chief Vigilance, original medical reimbursement claim along with cash memo of prescription, sanction orders were submitted. The details of the medical bills received by applicant are shown at Page 53 for total amount of Rs.10,30,073/-. The application for reimbursement and prescriptions, medical bills are produced at Page 54 to 91. Sanction order dated 27-12-2002, and prescriptions, medical bills are produced at Page 92 to 128. Sanction order dated 6-9-02 is produced at Page 129. The copy of check amounted to Cancer Hospital, application for sanction and bills are produced at Page 130 to 141, sanction order dated 20-10-03 along with application for sanction of bills and medical bills prescriptions are produced at Page 142 to 177. Sanction order dated 26-12-02 is produced at Page 78, the medical bills, application for sanction are produced at Page 179 to 229, sanction order of Rs.5000 is produced at Page 230 and application for sanctioning medical bills, prescriptions are produced at Page 231 to 260. Sanction order dated 10-6-05 Rs.10,000 is produced at Page 261. The application for sanction of bill and prescriptions and medical bills are produced at page 262 to 281. Sanction order

dated 14-11-05 alongwith medical bills, prescriptions are produced at Page 282 to 29, sanction order dated 4<sup>th</sup> April alongwith application for sanction and bills prescriptions are produced at Page 292 to 298. Sanction order dated 4-3-05, 1-4-05 and application for sanction of bills medical prescriptions, medical bills are produced at 299 to 306. Sanction order dated 4-2-85 is produced at Page 307. Letter by Dr.Pandya to G.S.Pathak, Vigilance is produced at Page 308 and accompanying documents at Page 309,310. The details of medicines, treatment charges of Indramati at submitted at Page 311 to 314. The documents regarding treatment prescriptions are also produced at Page 315 to 346. Letter of Dr.Pandya Director of Cancer Hospital, Bhopal is produced at Page 347 finds reference of the bills, OP record, receipt of Rs.60,000 etc. the details of the patient admitted as indoor patient, OPD visits are shown at Page 348 tallies with evidence given by Shri Pathak. The documents regarding treatment and medical bills are produced at Page 350 to 385. Workman in his explanation has stated that his father was handing over receipts and bills and he was submitting in office and he received amount of the bills. Evidence on record clearly shows that Indramati Pandey who is mother of Ist party was referred to Cancer Hospital, Bhopal. Bills are claimed by workman for the days she was not receiving treatment. The workman has not examined his father to support his defence. Workman has admitted receipt of amount of medical bills whereas as per letter received from Director K.Pandya, amount of Rs.60,000 and 40,000 was deposited by cheque, total amount Rs.83,099/- was spent for treatment. It is clear from evidence that workman received amount of bills for period patient had not received treatment. Therefore it is clear that the bills submitted by workman for excess period are bogus.

11. Learned counsel for Ist party workman Shri S.Mishra submits that mere production of document is not enough, the contents are not proved. In support of his argument, Shri S.Mishra relies on ratio held in case between

Roop Singh Negi versus Punjab National Bank and others reported in 2009(2)SCC-570. Their Lordship held mere production of documents is not enough. Contents of documentary evidence has to be proved by examining witnesses. That Appellant alleged to have confessed to police that he was involved in stealing of bank draft book.

The facts of present case are different. Mother of workman was submitting bills etc. to Ist party workman and he was submitting those documents in office. He received medical bills. In cross-examination of G.S.Pathak, the documents received along with Exhibit 1 to 3 were not challenged. It was not contention of workman that bills under which he received amount were not submitted by him.

12. Shri S.Mishra for workman further submits that standard of proof in enquiry is different. In support of his argument, learned counsel relies on ratio held in case between-

Ministry of Finance and another versus S.B.Ramesh reported in 1998(3)SCC-227. Their Lordship dealing with standard of proof and findings of Enquiry Officer held that their Lordship dealing with Rule 14 & 8 of CCS CCA Rules and evidence appearing against delinquent. That Enquiry Officer had not admitted to question delinquent employee. That anyone of 7 documents were proved by witness and certain documents have been marked by delinquent. That the said document allegedly containing the statement of the lady in question was relied on by the Enquiry Officer and the disciplinary authority without offering her as a witness for cross examination, the witness in whose presence the said statement was allegedly made had not spoken to the details of the contents thereof, the authenticity of the said statement had been denied by the delinquent employee, inference drawn by the authorities merely on the ground of similarity of handwriting, signature or telephone numbers that the name occurring in certain document as that of the delinquent was merely a guess work and couldnot be relied on to prove the charge. Their Lordship held that witnesses whose statements are relied on must be produced.

The facts of present case are not comparable. From evidence of Shri G.S.Pathak, he received documents Exhibit 1 to 3 in cross examination. Workman did not dispute genuiness of the documents given in his statement. Workman has not stated anything about the documents referred in evidence of witness Shri G.S.Pathak.

13. Shri A.K.Shashi for management submits that Tribunal cannot re-appreciate evidence. In support of his argument, reliance is placed in

State Bank of India and others versus Ramesh DinkarPunde reported in 2006(7)SCC-212. Their Lordship dealing with scope of judicial review held re-appreciation of evidence is impermissible.

Reliance is placed in case of State of Haryana and another versus Rattan Singh reported in 1977(2)SCC-49. Their Lordship held in domestic enquiry, all the sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act.

Reliance is also placed in case between Union of India versus A.Nagammaleshwar Rao reported in AIR-1998-SC-III. Ratio held pertains to powers of Administrative Tribunals under Section 14. Powers under Section 11-A ID Act are not comparable with the powers under Section 14 of Administrative Tribunal Act. Ratio cannot be applied to case at hand. for the reasons discussed above, I record my finding in Point No.1 in Affirmative.

14. Point No.2- In view of my finding in Point No.1 charges of misconduct alleged against workman are proved from evidence in Enquiry Proceedings, question remains for consideration is whether the punishment of dismissal against workman is proper and legal. The proved misconduct of workman of receiving huge amount of bills for the period his mother had not received treatment in hospital is certainly grave in nature.

15. On the point Shri A.K.Shashi relies on ratio held in case between-

Karnataka Bank Ltd versus A.L.Mohan Rao reported in 2006(1)SCC-63. Their Lordship dealing with proportionality of penalty/ punishment and judicial review held Single Judge of High Court allowing writ petition and ordering reinstatement even though it found that misconduct proved on simple grounds impermissible. The gross misconduct of this nature doesnot vary dismissal, it cannot be seen what other type of misconduct would merit dismissal. It is not for courts to interfere in cases of gross misconduct of this nature with decision if disciplinary authority on any mistaken notion of sympathy so long as inquiry has been fair and proper, and misconduct proved. In such matters it is for disciplinary authority to decide what is the fit punishment.

Shri A.K.Shashi also relied in case of West Bokaro Colliery versus Ram Pravesh Singh reported in 2009-I-LLJ-220(SC). Their Lordship held respondent as Sr. dumper operator. He was dismissed from service for leaving work without permission and indecent and disorderly behavior. The Industrial Tribunal to which the dispute was referred held the charges against him not proved and set aside the dismissal. The High Court confirmed the same. Their Lordship held Tribunal has set aside dismissal of workman beyond reasonable doubt. Industrial Tribunal should be slow in interfering with conclusion in domestic enquiry.

In view of my finding that charges are proved and misconduct proved against workman is of grave nature, punishment of dismissal doesnot call for interference. Accordingly I record my finding in Point No.2.

16. In the result, award is passed as under:-

- (1) The action of the management is proper and legal.
- (2) workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2297.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एस. ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 111/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.09.2017 को प्राप्त हुआ था।

[सं. एल-22012/8/2008-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 25th September, 2017

**S.O. 2297.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 111/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the management of M/s. S.E.C.L. and their workmen, received by the Central Government on 01.09.2017.

[No. L-22012/8/2008-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/111/2008

The President,  
Rashtriya Colliery Mazdoor Congress (INTUC).  
PO Pali Project,  
Distt. Umaria (MP)

...Workman/Union

**Versus**

Chief General Manager,  
Johilla Area of SECL,  
PO Nowrazabad,  
Distt. Umaria, MP

...Management

### AWARD

Passed on this 12<sup>th</sup> day of July 2017

1. As per letter dated 25-11-08 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/8/2008-IR(CM-II). The dispute under reference relates to:

“Whether the demand of the Union for re-fixation of pay of Shri Vidyanand on his conversion from SDL Operator Gr “C” to the designation of Pump Khalasi Cat.2 on his request by way of protecting earlier wages drawn by him is legal and justified? To what relief is the workman concerned entitled?”

2. After receiving reference, notices were issued to the parties. Ist party Union submitted statement of claim through Secretary of Eastern Koyla Mazdoor Congress. Case of Ist party is that workman Vidyanand was working as SDL operator Gr-“C” in 1997. At the time of his conversion, basic wages were reduced. In May 1997, basic wages of Vidyanand working as SDL operator Grade C were Rs.180.87. said workman was not keeping well. He submitted application for conversion of his post. He was converted to the post of pump operator Cat-II. After his conversion to pump operator Cat-II, his wages were reduced to Rs.129.79. workman was not given understanding about said reduction of wages. That while converting loader General Mazdoor Cat-I basic wages were not reduced. After the matter was raised before ALC, the management did not settle the dispute. Ist party prays that reduction of wages of Vidyanand Pump Operator Cat-II be restored and arrears be paid to him.

3. Management filed Written Statement opposing claim of workman. Preliminary objection is raised that Ist party claimed wages of SDL operator while working as Khalasi. Ist party has not mentioned the period. The particulars of pay protection claimed by Ist party are missing. The reference is not tenable. It is further contented that service conditions of coal mine workers are covered by NCWA. Cadre scheme formulated for purpose of promotions of workers for each category, pay scale etc are provided. Pay protection is nowhere mentioned in service conditions that workman Vidyanand was initially appointed as General Mazdoor at Pali Colliery. He was transferred to Birsinghpur colliery. On recommendation of DPC duly approved by the Sub Area Manager, Pali Group, 8 workers working as General Mazdoor were promoted to the post of SDL Operator Cat V vide order dated 9-10-92. Shri Vidyanand was again promoted to the post of SDL Operator Cat-VI as per order dated 27-11-93. As per order 19-11-94, he was designated as SDL Operator Cat-VI. Job of maintenance was given. He was placed in excavation on 2-11-94.

4. Workman Vidyanand submitted application for post of pump khalasi. His application was sympathetically considered. On his option, he was allowed post of pump khalasi as per order dated 15-8-97. Accordingly he was designated w.e.f. 1-5-97. Management has passed common order in respect of all the employees mentioned in the office order. Vidyanand was re-designated on his demand to post of pump khalasi Cat-II. On demands of the Union for pay protection, matter was discussed on 6-4-01, it was settled after said discussion after adding increments for 11 years in Cat-II Scale on Pay Rs.8.49, wages were to be fixed Rs.151.89 till 1-10-00. Accordingly fixation of wages were recommended. Above fixation of wages were recommended. Above decision was implemented as per order dated 4-6-01. On recommendation of DPC, workman was promoted to the post of Pump Khalasi Grade III as per order dated 23-3-02. Workman was granted maximum possible benefits. He was given promotion claim for pay protection is not tenable. In parawise reply, 2<sup>nd</sup> party management submits that basic pay of workman was not deducted. Engagement of workman as SDL operator is not disputed. It is reiterated that while workman working as SDL operator was given pay scale for said post. Workman opted to the post of lower category pump khalasi Grade II. He was given pay scale attached to said post. There was no deduction in basic pay. If workman is willing to do job of SDL operator, management is willing to offer said post to the workman. The wages of post of SDL operator could be availed by him. On such ground, 2<sup>nd</sup> party prays for rejection of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the demand of the Union for re-fixation of pay of Shri Vidyanand on his conversion from SDL Operator Gr “C” to the designation of Pump Khalasi Cat.2 on his request by way of protecting earlier wages drawn by him is legal and justified?	Demand of Union is not legal.
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

**REASONS**

6. Point No.1- The term of reference pertains to re-fixation of pay of workman Vidyanand including pay protection of the post of SDL Operator Grade C. workman filed affidavit of his evidence. Workman in his affidavit of evidence says he was working as SDL operator Grade C in Pali colliery. Prior to 1-5-97, his basic pay as SDL Operator Grade C was Rs.180.87. that due to illness, he applied for change of cadre. Management changed his post to pump operator Category II. That after change in cadre, his basic pay was reduced from Rs.180.87 to Rs.129.79. The reduction in basic wages was affected without giving any opportunity of hearing. In his cross-examination, workman says he was not examined by medical board for giving light work. Certificate of medical board is necessary for giving light work was not within his knowledge. Light work given to him by management was not recommended by Medical Board. He was allowed light work by management of pump khalasi Cat-II. He not objected to it. In his further cross examination, Category of several workers was changed by management but he was unable to tell their names. He was unable to tell whether categories of workers were changed with consent or without consent.

7. Management filed affidavit of witness Shri P.S.Mundra supporting whole contentions in Written Statement filed by management. Prominently on application of workman, he was re-designated as pump khalasi Cat-II w.e.f. 1-5-97. As per discussion dated 16-4-01, workman was allowed increments for 11 years. His wages were fixed Rs.151.89. documents Exhibit M-3 to 7 are admitted in evidence. In his cross examination, management's witness says the service conditions of employees of 2<sup>nd</sup> party are covered by NCWA. He denies that after change of cadre employees are entitled to pay protection. Management's witness denies that at the time of conversion of workman from SDL operator to Pump operator, he was not given understanding about pay protection would not be given to him.

8. Ist party workman produced document Exhibit W-1. He had submitted application requesting conversion from post of SDL operator to post of pump khalasi on the ground of his illness. Exhibit W-2 is order re-designating workman to the post of pump operator Khalasi. Exhibit W-3 is application submitted by Union that workman was not given pay protection at the time of conversion from SDL operator to pump khalasi. Exhibit W-4 is also representation submitted by Union pursuing some grievance.

9. Management produced appointment letter of workman at Exhibit M-1 on post of SDL operator Cat-V. Exhibit M-1(a) order of promotion of workman along with others to SDL operator Cat-VI dated 20-11-93. Exhibit M-2 is application submitted by workman requesting conversion to post of pump khalasi. Exhibit M-3 is order dated 16-11-94, workman was placed in excavation Grade C. Exhibit M-4 is office order dated 15-8-97, workman was re-designated as pump operator Cat-II. MJ-5 is management added 11 increments in Cat-II scale as per NCWA-V, VI & wages to Ist party workman were fixed Rs.1151.89. Exhibit M-6 is order dated 2-6-01 allowing basic wages Rs.151.89 to Vidyanand and other. M-7 is order dated 23-3-02 workman was promoted to the post of pump khalasi Cat-III. Workman has not produced any document that at the time of conversion on his request, he was entitled to pay protection benefits.

10. At the time of argument, learned counsel Shri R.C.Shrivastava emphasized that management has not shown how the wages of workman were reduced, any provision was not pointed out. The documents on record and evidence of workman and management's witness is cogent that on application submitted by workman, he was allowed conversion to the lower post of pump khalasi Cat-II. Prior to it, workman was working on post of SDL operator Grade C, a higher post. Application was submitted on ground of illness for conversion. On his request considering illness, conversion from SDL operator Grade C to Khalasi Cat-II allowed by management. Workman is already given benefit of 1 increments therefore demand of Union is not justified. I record my finding in Point No.1 in Negative.

11. In the result, award is passed as under:-

- (1) The demand of the Union for re-fixation of pay of Shri Vidyanand on his conversion from SDL Operator Gr "C" to the designation of Pump Khalasi Cat.2 is not legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2298.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डब्ल्यू.सी.एल. एवं अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 155/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.09.2017 को प्राप्त हुआ था।

[सं. एल-22012/162/1999-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 25th September, 2017

**S.O. 2298.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 155/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L. and other and their workmen, received by the Central Government on 01.09.2017.

[No. L-22012/162/1999-IR (C-II)]

RAJENDER SINGH, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR**

**NO. CGIT/LC/R/155/99**

Shri Anand S/o Malkhan & others,  
Newton Chikli, Tehsil Parasia,  
Distt. Chhindwara (MP)

...Workman/Union

**Versus**

Chief General Manager,  
WCL, Pench Area, PO Parasia,  
Distt. Chhindwara (MP)

The Chairman-cum-Managing Director,  
MECL, Seminary Hill,  
MECL Bhawan, Nagpur (MS)

...Management

**AWARD**

Passed on this 12<sup>th</sup> day of July 2017

1. As per letter dated 8-4-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/162/99-IR(C-II). The dispute under reference relates to:

“Whether the action of the management of WCL, Pench Area, PO Parasia, Distt. Chhindwara in not regularizing Shri Malkhan and 283 others (list enclosed) employed by MECL contractor in prohibited category is justified? If not, to what relief the workmen are entitled?”

2. After receiving reference, notices were issued to the parties. Statement of claim on behalf of workman is submitted by President, Lochan Prasad, Lal Jhanda Mazdoor Union. Case of Ist party is that WCL allotted work of Mahadeopuri incline to MECL in the year 1987 on contract. MECL appointed 284 workers. Union is situated in pench valley coal project, Parasia, Distt. Chhindwara. That the workman worked in drifting in Mahadeopuri colliery incline. That contract labour comes under prohibited category. The work of cutting, digging of stone comes in prohibited category as per Contract Labour Act. That the workers worked more than one year in the colliery. Workers of MECL were given VTC training under control of management of WCL. That MECL published list of workers of Mahadeopuri incline mentioning category, names, skilled, unskilled, their appointment, age as on April 86 and qualification. On 31-8-88, MECL illegally terminated services. Management of MECL/WCL illegally terminated services of workman without giving opportunity of hearing. Services of workman were terminated without notice not following principles of natural justice. Workman opposed the act of management and demanded salary as per NCWA. Union had demonstrated the matter calling strike. The matter was taken up before ALC, Chhindwara, the meeting was called on 7-9-88. It was decided that demand of workers in Mahadeopuri was decided in arbitration. Shri K.Sammugavell was appointed as Arbitrator. Arbitrator considering the matter on 5-2-94 no dispute award was passed. It is further reiterated that arbitrator was unable to decide the matter. On 3-3-97, the dispute was raised before ALC, Chhindwara. ALC, Chhindwara directed management to decide grievance of 284 workers as per law. Management did not decide the matter, Writ Petition No. 3887/98 was filed before Hon'ble High Court as per order dated 30-10-98 passed by Hon'ble High Court directions were issued to decide case according to law. The dispute has been referred by Government. It is further submitted that 284 workmen were doing their duties in prohibited category under control of management of WCL. That they are employees of WCL and entitled for regularization in service with consequential benefits. Ist party prays that order of termination dated 31-8-08 be set aside and workman be regularized in service with backwages etc.

3. 2<sup>nd</sup> party WCL filed Written Statement opposing claim of Ist party. Preliminary objection is raised that the dispute was raised by Late P.P.Bannerjee in capacity of General Secretary of SKMS Union. Mr.Bannerjee died, SKMS Union has not come forward to contest the reference. Claimants have also not come forward requesting permission to contest or prosecute the reference. The present representative has no locus standi to prosecute the case. That statement of claim signed by Lochan Prasad. Identity and status is not disclosed in statement of claim is not of SKMS Union neither he is claimant in the dispute. Statement of claim cannot be said of SKMS Union. Objection in that regard was also raised on 24-6-2010. Claim under statement of claim is not valid. That M/S MECL contractor is impleaded as party. It is further reiterated that terms of reference are vague. In absence of particulars of claimants regarding engagement by contractor and nature of job done by them, the reference is not tenable. 2<sup>nd</sup> party has referred to ratio held in various cases contending that the reference is highly belated. Workmen were engaged in the year 1988. Dispute is raised in the year 1999 is not tenable. Reference is also prejudicial to the interest of management. There being contrary facts on record that the claimant were never engaged by WCL, the identification of claimant is disputed. Therefore particulars are not given in reference order. Union has no locus standi. Claimants were not members of the Union. Shri P.K.Bannerjee has no authority to raise the dispute.

4. 2<sup>nd</sup> party further submits that WCL is subsidiary of coal India. There is no employer employee relationship. Dispute raised by claimant is false. Claimants are not workman under ID Act. Appointments in coal industry are covered by rules. Workmen were not engaged following recruitment rules, they were not sponsored by Employment Exchange. That MECL undertakes several work of Government undertakings and private concerns. WCL had granted contract of underground drifting from Seam 3 to 2, Rawanwara colliery, Seam 2 to Eklehra colliery. The contract of drivage to new incline at Mahadeopuri was given to MECL in 1988. MECL completed job. Full accounts were settled. Project was completed. The terms and conditions of contract were mutually settled after discussion and letter dated 3-12-86. Advance payments were made. The details of payments as per note sheet dated 17-6-87, 4-5-89, 23-3-91 several other letters are pleaded in Written Statement. Accounts were finally settled. It is reiterated that Arbitrator Shri K.Sammugavelli Retired CLC Madras was appointed, no dispute award was passed by said arbitrator on 5-2-94. Shri Bannerjee thereafter raised the dispute. The dispute has been referred as per direction by Hon'ble High Court that the work done by contract labour was not work done by regular employees, it was of casual nature. The contractor was registered, establishment is also registered under CL(R&A)Act. WCL has registration under CL(R&A)Act. After completion of work, notice was displayed inviting objections regarding non-payment of wages, any objection was not received. That the contractor engaged labours for execution of work holding licence under CL(R&A)Act. WCL was not concerned with engagement of contract labours. 2<sup>nd</sup> party denies that WCL had given contract for digging coal mine in 1987. It is denied that MECL appointed 284 workers. 2<sup>nd</sup> party admits that employees of MECL was provided VTC training as per rules. It is denied that MECL published list of workers of Mahadeopuri incline. 2<sup>nd</sup> party claims ignorance about termination of services of employees by MECL. That Arbitrator had decided no dispute award, the award was not challenged,. On such ground, 2<sup>nd</sup> party WCL submits that the dispute if any is between the claimant employees and MECL, WCL is not concerned with the claimants. On such ground, 2<sup>nd</sup> party prays for rejection of claim.

5. As per order dated 2-11-2010, MECL was impleaded as party. MECL has not filed Written Statement in the matter.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether Shri Malkhan and 283 others are employees engaged for work of prohibited category?	In Negative
(ii) Whether the action of the management of WCL, Pench Area, PO Parasia, Distt. Chhindwara in not regularizing Shri Malkhan and 283 others employed by MECL contractor in prohibited category is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workmen are not entitled to any relief.

### REASONS

7. Before dealing with matters on merit, objection is taken by management w.r.t. locus of Union whether the statement of claim filed on behalf of Ist party is valid. Shri A.K.Shashi for management submits that dispute is raised

by Mr. Bannerjee. After his death, SKMS Union has not come forward. Statement of claim is filed by one Lochan Prasad claiming to be President of Lal Jhanda coal Mines Mazdoor Union. Order of reference does not indicate that the dispute was raised by Lal Jhanda Mazdoor Union. How Lochan Prasad was competent to submit the statement of claim on behalf of Ist party workman is not explained, any documents about membership of claimants of Lal Jhanda Union are also not submitted on record. The statement of claim submitted by Lochan Prasad appears without locus. However order of reference pertains to claim for regularization and in statement of claim, it is pleaded that the services of claimants are terminated on 31-8-88. Legal position is settled that matter pertains to termination of services. Individual employees can be permitted to prosecute their claim. With above observations, I consider that the dispute under reference needs to be decided.

8. Point No.1- The term of reference pertains to engagement of employees of MECL contractor in prohibited category. In statement of claim Para-2 it is pleaded that workman worked drifting in Mahadeopuri incline comes under prohibited category. 2<sup>nd</sup> party WCL has denied the work is of prohibited category. Ist party filed identical affidavit Mahendra Singh Verma, Anand Kumar, Indal, and also examined claimant Shri Suresh Prasad Dixit. Mahendra Singh Verma in his affidavit of evidence says that he was working as labour in Mahadeopuri incline of WCL. During 30-11-87 to 31-8-88, he was doing work of tub loader, blasting MECL and had engaged him but he was working as labour of WCL. WCL was providing instruments for work. Their attendance was maintained by officers of WCL. VTC training was given to them. Anand Kumar, Indal have also in their affidavit have stated the similar facts. Suresh Prasad Dixit in his evidence says he was working as labour in Mahadeo mines from 1-3-87 to 16-1-94. He was doing work of digging earth/ mohra and for digging and helmet were given by WCL.

9. Shri Mahendra Singh in his cross denies that he did not work in WCL. He reiterates that he was working in WCL during 87 to 88. He did not remember whether appointment letter was given to him. Post was not advertised, his name was not sponsored through Employment Exchange. Anand Kumar in his cross says during 87-88, he was doing work of cutting stone, digging coal. He denied that he was not working in WCL. He denies that appointment letter was not issued to him. Indal in his cross says that appointment letter was given to him, it may have been produced in the case. He denies that he did not work in WCL. He denied that he was engaged by MECL.

10. Suresh Prasad Dixit in his cross examination says he was not engaged by MECL, he was engaged by WCL Mine Manager, Chandran. Post was not advertised. He did not get interview call. He passed HSc. For engagement as mazdoor in WCL, educational qualification is not required. He claims ignorance whether names of 284 claimants were sent through Employment Exchange. He claims ignorance about the work carried by Mine Manager. He denies that he did not work in WCL.

11. On above point, evidence of management's witnesses Tapan K.Mitra is that claimants were not engaged by WCL, MECL was engaged as contractor for drirage of new incline at Mahadeopuri. Claimants were engaged by contractor. Documents Exhibit M-1 to M-19 are produced w.r.t. the work given on contract to MECL, licence registration etc, payment of wages etc. Exhibit M-3 licence of MECL contractor, bills Exhibit M-8,9 certificates, M-5,6 bill Exhibit M-7 shows that MECL was engaged as contractor and carried work of incline shaft. Pleadings in statement of claim filed by Ist party as well as evidence of all witnesses is silent that contract between MECL and WCL is sham, camouflage or bogus.

12. Shri A.K.Shashi for management submits that the pleadings and evidence of claimants are contrary. The claimants in their statement of claim pleaded that they were engaged by MECL but working with WCL, in the evidence they claimed they were working in WCL. Evidence cannot be said contrary to the pleadings. On the point Shri A.K.Shashi relies on ratio held in case between-

Municipal Committee, Tauru versus Harpal Singh and another reported in 1990-9-I-LLJ-1028. Their Lordship held that evidence tendered in court should be based on claim statement. Courts will have to be alert on this. inconsistent stand of party in court will not bring in any result.

Next reliance is placed on case between Steel Authority of India Ltd and another versus State of West Bengal and others reported in 2009-I-LLJ-241(SC). Their Lordship dealing with Section 7-A and 10 of Contract Labour Act held dispute referred by state Government, no pleading by workmen that contract was sham and bogus, the reference was quashed.

In present case, in statement of claim and evidence, claimants are silent that contract is sham and bogus rather the terms of reference pertains to contract labours of employees engaged by contractor in prohibited category. Ratio held in the case therefore cannot be applied to case at hand. Though the dispute is raised in the year 1999 w.r.t. prohibited category of work, notification issued by Government was not produced till the evidence of parties was completed. Notification is produced at Exhibit W-1 at the time of argument. Exhibit W-1 notification dated 21-6-88 prohibits work (a) raising or raising cum selling of coal, coal loading and unloading, overburden removal and earth cutting, soft cake manufacturing, driving of stone drifts and miscellaneous stone cutting underground. The proviso B in the notification is clear that notification does not apply to quarries located by the side of the river in pench valley and

similar other patch deposits which can only be worked when the level of river has gone down and during non rainy season.

Considering proviso in notification Exhibit W-1 notification doesnot apply to prohibited work in pench valley area, the claim that Ist party workman are employees of WCL is not supported.

13. So far as evidence in cross examination of management's witness TapanMitra shows he was working as finance officer in WCL, Pench Area during 87 to 90. That for special mine incharge, Mine Manager used to be kept. He claims ignorance that attendance of employees engaged by contractor is maintained under control of Mine Manager. The Finance Officer makes contractual payment. Personal officer is posted in mines for welfare of the employees. In new mines, Mines Manager remains incharge. He was not concerned with VTC given to the workman. Evidence of management witness is not useful to support the claim of workman as there is no pleading or evidence that the contractor MECL is engaged by WCL was camouflage. For the same reasons, the evidence in cross examination of management's witness Abhijit Dutta is not useful to support claim of Ist party. Evidence of management's witness Prakash Pandey is on the point of engagement of MECL contractor for work drivage of incline in Mahadeopuri mine. His evidence is absolutely not related to prohibited category of work. As per notification Exhibit W-1 Pench Area is exempted from said notification. Detailed discussion of evidence of management's witness is not necessary.

14. Learned counsel for Ist party Shri R.C.Shrivastava relies on ratio held in case between

Western Coalfields Ltd and another versus Samyukta Koyla Mazdoor Sangh reported in 2016(2)MPLJ-217. Ratio held in the case pertains to Appellant company has allocated work covered under prohibited catgory to a private contractor for a period of more than one year. Their Lordship held that workman employed by Private contractor claimed to be treated as workmen of appellant company, it would e open to said workman or Union to espouse his cause by way of industrial dispute.

Considering Exhibit W-1 notification is not applicable to Pench Area, ratio cannot be beneficially applied to case at hand.

Shri R.C.Shrivastava also relies on ratio held in case between Steel Authority of India Ltd and others versus National Union Water Front Workers and others reported in 2001(7)SCC-1. Particularly my attention was pointed out to para 68 to 125 of the judgment. However in present case, notification Exhibit W-1 prohibited work is not applicable to Pench Area. Ratio held in the case cannot be applied to present case at hand. For above reasons, I record my finding on Point No.1 in Negative.

15. Point No.2- The term of reference pertains to denial of regularization of Malkhan and others by WCL. As per my finding in Point No.1 claimants were not engaged in prohibited category of work, claimants in their statement of claim or evidence have not claimed that MECL contractor engaged by WCL was bogus or camouflage. Claimants have not produced any documents about their engagement by WCL. Evidence in cross examination of witnesses of Ist party clearly shows that appointment letters were not given to them. Documents regarding appointment of claimants are not produced. There is no evidence that workman were appointed by WCL following any kind of procedure. So far as evidence of management's witness R.N.Singh pertains to documents Exhibit M-20/1 to 20/21 are the loss and profit statements. The profit or loss by Industry hardly relevant for deciding claim of claimants for regularization. In view of my finding in Point No.1 claimants were not engaged in prohibited category, there is no pleading in evidence that contract was never camouflage or bogus. Ratio held in the case Hindustan Steel works construction versus Commissioner of Labour and others reported in 1996(2)LLN-1068, ratio held in case Airport Authority of India versus Indian Airport Kamgar Union reported in 2011-I-LLJ-211- Bombay, Oshiar Prasad and other versus BCCL reported in 2015-I-LLJ-53(SC) relied by Shri A.K.Shashi needs no detailed discussion.

Ratio held in case between State of Himachal Pradesh versus Suresh Kumar Verma reported in 1996(2)SLR-321, State of Rajasthan versus Sarjeet Singh and another reported in 2007-I-LLJ-236, Post Master General Kolkata versus Tutu Das reported in 2007(5)SCC-317, SAIL versus Union of India and others reported in 2006(12)SCC-233 needs no detailed discussion as workman were not engaged in prohibited category of work.

In view of my finding in Point No.1 as workman was not engaged in prohibited category of work, services of Ist party were terminated on 31-8-88 itself, reference is raised in the year 1998 is belated. Action of the management of WCL not regularizing the services of claimants cannot be said illegal. For above reasons, I record my finding in Point No.2 in Affirmative.

16. Before parting with the matter, it would be appropriate to consider that no dispute award was passed by Arbitrator is produced at Exhibit M-7. From careful reading of said award shows that the Union had signed agreement for reference on 8-4-91. The period was over on 31-3-92. Union had refused to extend the time to arbitrator to exercise his authority and give award. Consequently no dispute award was passed and dispute was raised by union in 1998. No

dispute award passed in the matter by arbitrator doesnot take away jurisdiction of this Tribunal as Union had not agreed for extension of the period.

17. In view of my finding recorded above, award is passed as under:-

- (1) The action of the management of WCL, Pench Area, PO Parasia, Distt. Chhindwara in not regularizing Shri Malkhan and 283 others employed by MECL contractor in prohibited category is legal and proper.
- (2) Workmen are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2299.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडिया एअरलाईन्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1449/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.09.2017 को प्राप्त हुआ था।

[सं. एल-11012/53/2003-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 25th September, 2017

**S.O. 2299.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Ref. No. 1449 of 2004) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Airlines Ltd. and their workmen, which was received by the Central Government on 04.09.2017.

[No. L-11012/53/2003-IR (C-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 10<sup>th</sup> July, 2017

##### Reference: (CGITA) No. 1449/2004

The Manager,  
Indian Airlines Limited, University Road,  
Fatehganj, Baroda (Gujarat)

...First Party

##### V/s

The President,  
Gujarat Mazdoor Panchayat,  
Sharam Shakti, Post Box No. 77, GPO,  
Opp. Prabhat Press, Mirjapur Road,  
Ahmedabad – 380001

...Second Party

For the First Party : Shri Prakash Gogia

For the Second Party :

#### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-11012/53/2003-IR(C-I) dated 23.08.2004 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the demand of the Gujarat Mazdoor Panchayat for reinstatement/regularisation of (1) S/Shri Santosh D. Chalke (2) Iqbalhusain S. Gohil (3) Bhailalbhair D. Rathod (4) Rajakbhai Y. Shaik (5) Kanubhai D. Parmar (6) Devidas N. Dhabhade (7) Sanjaykumar D. Patanbadia (8) Wasimbhai A. Shaikh (9) Bharatbhai D. Patil (10) Jasubhai K. Rathod is justified? If so, to what relief are the concerned workmen entitled and from what date?”

1. The reference dates back to 23.08.2004. The second party submitted the statement of claim Ex. 5 on 02.05.2005 and the first party submitted the written statement Ex. 8 on 18.10.2009. Despite submitting the no. of documents by the second party and also by the first party, the second party workman did not prefer to lead evidence even after a period of 8 years after the submission of written statement by the first party.
2. The first party submitted the affidavit Ex. 15 in support of the written statement on 26.06.2014 reiterating the averments made in the written statement.
3. On 20.03.2017, the second party whose representatives are usually very much in the court, were given last opportunity to lead evidence but to no result. On the said date, the second party representatives were informed that if they did not submit the evidence on behalf of the second party, the reference shall be disposed of in the light of the affidavit/evidence of the first party.
4. The first party has fully denied the averments made in the statement of claim in their written statement as well as in the affidavit Ex. 15.
5. Thus the reference in the absence of the evidence of the second party is disposed of with the observation as under: “the demand of the Gujarat Mazdoor Panchayat for reinstatement/regularisation of (1) S/Shri Santosh D. Chalke (2) Iqbalhusain S. Gohil (3) Bhailalbhair D. Rathod (4) Rajakbhai Y. Shaik (5) Kanubhai D. Parmar (6) Devidas N. Dhabhade (7) Sanjaykumar D. Patanbadia (8) Wasimbhai A. Shaikh (9) Bharatbhai D. Patil (10) Jasubhai K. Rathod is not justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2300.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 26/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.09.2017 को प्राप्त हुआ था।

[सं. एल-20012/21/2011-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 25th September, 2017

**S.O. 2300.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 26 of 2011) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 07.09.2017.

[No. L-20012/21/2011-IR (CM-I)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), DHANBAD**

**Present :** Shri R. K. Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10 (1) (d) of I.D. Act, 1947

**REFERENCE NO. 26 OF 2011**

**PARTIES**

:

The Secretary,  
Bahujan Mazdoor Union,  
Mines Rescue Station, Dhansar  
PO: Dhansar, Dhanbad.

**Vs.**

The General Manager,  
Kustore Area of M/s. BCCL  
PO: Kustore, Dhanbad.

**Order No. L-20012/21/2011-IR (CM-I) dt.02.09.2011**

**APPEARANCES :**

On behalf of the workman/Union : Mr R.R. Ram, Ld. Advocate

On behalf of the Management : Mr D.K.Verma, Ld. Advocate

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 24<sup>th</sup> July, 2017

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. **L-20012/21/2011-IR (CM-I) dt.02.09.2011.**

**SCHEDULE**

“Whether the action of the Management of Hurriladih Colliery of M/s. BCCL in dismissing Sri Sheo Kumar Nonia, Ex- M/Loader from the services of the Company vide order dated 07/17.06.2004 is justified and fair? To what relief is the concerned workman entitled to?”

2. On receipt of the Order No. **L-20012/21/2011-IR (CM-I) dt.02.09.2011.** of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 26 of 2011 was registered on 12.09.2011, and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Ld. Counsels respective appeared respectively, and contested the case.

2. The case as briefed in W.S. by the Ld. Advocate Shri R.R.Ram about the workman concerned is that the workman was designated as Ex.M.Loader as a permanent workman with Pers.No. 03016235 of Hurriladih Colliery under Groups of the Management of M/s. BCCL, left for native village unauthorisedly and remained prolonged period on leave since 15.07.2003 and got himself involved over land dispute among his family members and to look after his sick father as well .The Management issued a charge sheet on 30.12.2003 framing absentism ground for his being remained on prolonged leave unauthorisely as misconduct alleged in WS by the workman ,to which in an open admission .the sponsoring Union Rep. pleaded workman's illiteracy and blissfully ignorant of the rules and regulations ,enforced in the Management by the time .After having been charge sheeted, he was apparently participated in the enquiry under which workman's grievances remained unheard and he was formally dismissed w.e.f 07/17.06.2004 without any concrete rhyme and reason whatsoever . The allegations, as came out by the Management were not established nor did workman's petition for prayer take into consideration before imposing harsher punishment .So the alleged act of the Management about dismissal stands unjustified and arbitrary. seeking reinstatement into service summarily

Contrary to it, the O.P./Management. categorically denying all the charges brought upon against it, asserted that the dismissal order of the workman was not singled out to one incident engulfing therein but taking into consideration of his past poor service records as to thin attendances. And even after this had tuned into a habitual and regular practice against which he was slapped with charge sheet .On not being found satisfactory to the reply against the chargehseet, the Management went ahead constituting domestic enquiry under the Disciplinary Authority the then Dy. Manager in the capacity of Enquiry Officer. The worker concerned was found guilty of the charges levelled against him and held him responsible as suggestions came out of the Enquiry Report submitted to the Disciplinary Authority. Later on the Competent Authority issued Second Show Cause Notice with copy of Enquiry Report upon the workman before dismissing the workman from service and taking into counts his past history track records of absentism .So the conduct and manner in which enquiry held, got mired as alleged by the Union, was absolutely baseless, unfair, improper and nothing to do with reality because full opportunity was provided to come out in his defence. Even in eventuality of not being convinced, the Management does stand by its words to adduce

afresh evidence. At last the dismissal is legal and justified with no violation of the natural justice, the workman deserves for

Though arguments and counter by each other and vice-versa with logics continue to haunt in best possible way to suit the interest of the parties concerned. So long as the job of Coal Mazdoor obviously seems to be an arduous and tedious in nature which needs a hale and hearty structure of health all the time and more physical labour particularly in underground Mines surrounding very odds unhygienic atmosphere, apart from putting life into risks. However, there is nothing unusual on the part of the workman proceeding on prolonged leave even on a single call of urgency, avoiding venturing out in the Mines for work. It sometimes proves fatal and forces them to expose casualty keeping of lives at stake despite best mechanism of safety norms in place. Though the workman has set the logics very candidly. The punishment of dismissal inflicted upon the workman to the alleged misconduct of absentism, he committed, however does not stand proportionate and fair, rather be termed harsher in natural justice as he was robbed off his bread and butter with no means of alternative livelihood in days of hardships.

Hence the Tribunal is of the view that the move will not be termed wrong and improper and against the natural justice if the workman concerned be provided a little bit breather by way of employment as fresher in Cat.-I as General Mazdoor before determination of his age with statutory record of Form-B Register but no back wages whatsoever. Thus it is ordered for fresh employment of the workman concerned as fresher as Cat. - I with probation rolling over up to 2 years only after determination of his age.

R. K. SARAN, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2301.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 28/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.09.2017 को प्राप्त हुआ था।

[सं. एल-20012/161/2015-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 25th September, 2017

**S.O. 2301.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 28 of 2016) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 07.09.2017.

[No. L-20012/161/2015-IR (CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), DHANBAD

**Present :** Shri R. K. Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10 (1) (d) of the I.D. Act, 1947

#### REFERENCE NO. 28 OF 2016

**PARTIES :** The Secretary,  
Jharkhand Janta Mazdoor Union,  
Vishwakarma Colony, Nutundih  
PO: Jagjivan Nagar, Dhanbad.

**Vs.**

The General Manager,  
P.B. Area of M/s BCCL  
PO: Kusunda, Dhanbad.

Order No. L-20012/161/2015-IR (CM-I) dt.15.02.2016

**APPEARANCES :**

On behalf of the workman/Union : Mr. P. Mandal, Ld. Union Rep.

On behalf of the Management : Mr U.N. Lal, Ld. Advocate

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 24<sup>th</sup> July, 2017

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. **L-20012/161/2015-IR (CM-I) dt.15.02.2016**.

**SCHEDULE**

Whether the action of the Management of Kustore Colliery under P.B.Area of M/s. BCCL in dismissing Sri Basudeo Mallick, M/Loader vide letter 07/08.12.2000 is fair and justified ? To what relief the concerned workman is entitled to?

2. On receipt of the Order No. **L-20012/161/2015-IR (CM-I) dt.15.02.2016** of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 28 of 2016 was registered on 25.02.2016, and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Ld. Representative/ Counsel respective appeared respectively, and contested the case.

3. The case as briefed in W.S. by the Union Representative Ld. Advocate Shri Pintu Mandal about that the workman Basdeo Mallick an permanent employee of Kustore Colliery under P.B.Area had abruptly been absent of duty since 10.08.1998 due to illness but reported the matter to the Management. After recovery from illness when he went for resumption of duty, the Management denied permission to do so by issuing with a charge sheet dt. 13/14.10.1999 in accordance with the provisions under clause 26.1.1. of the Certified Standings Orders an by-laws of the BCCL Management with no fault of any misconduct on the part of the workman. The contention of the workman was never unheard both by the Enquiry Officer and Disciplinary Authority. Fairness of the enquiry got mired with violation of the natural justice and put a question mark over the way the enquiry was conducted. Despite having an unblemished service track record, the workman had to appear before the Enquiry Committee which was largely constituted to deal with the misconduct itself implied for minor punishment, and finally he was dismissed from services on 20.10.2005 by the Management of the Kustore Ultimately, the Management of Kustore Colliery came out with dismissal of the workman without issuing a second show-cause notice. Since after dismissal the workman's mercy to this regard could not be disposed of in accordance with provisions of the Certified Standing Orders by the Appellate Authority itself attracts violation of clause 30 of the Certified Standing Orders. So the alleged action of the Management about dismissal stands not only unjustified but arbitrary and bad in law also, seeking reinstatement into service with full back wages summarily.

Contrary to the fact, categorically denying all the allegations as stated by the workman in his W.S., the Management asserted that upon issuance the said charge sheet, the matter was refereed to get enquired in depth, by forming an Enquiry Committee by S/ Sri A.Jha and A.K.Jha as Enquiry Officer and Presenting Officer providing sufficient time to come out with his defence and the Enquiry Committee onwards submitted report to the Disciplinary Authority who in turn, taking his past poor service track records over attendance, imposed penalty of dismissal based on outcome of the Domestic Enquiry, in which the workman concerned was proved guilty of the charges brought upon against him by the OP/Management. As the matter, in issue was taken up by the Union concerned before the ALC®, Dhanbad for conciliation with making availability of the full facts etc followed with documents by the Management to convince whatsoever actions felt imperative was taken as the Management still standby the action of dismissal. The Disciplinary Authority also maintained the Enquiry was held largely to go to bottom of the facts of the issue providing the workmen sufficient opportunity to come out in his self defence, and in the line of the natural justice. Thus, the Disciplinary Authority decided to impose penalty of dismissal from service, taking into his past record of meager attendances in account but without considering his appeal for reinstatement in view of his past poor attendances. Though documents in Ext. M 1- to M-8 in series stayed Exhibited on mutual consent of both the parties concerned on being waived formal proof. Post dismissal Management reiterated its commitment to go in for adducing afresh in

eventuality of being unconvinced. So there is nothing short of violation of the natural justice, as alleged by the workman but do affirm the so-called enquiry as fair and just.

No wonder, cases of absentism get insignificant, unprecedented and unusual so long as Groups of the Collieries under the BCCL Management are concerned as hailing illiteracy backgrounds of workmen, mostly intent to move on prolonged leave as being scared of the safety points of view and often evade stepping into the underground Mines which proved fatal and disastrous at times despite best mechanism of safety apparatus in place and its periodical reviews. Summing up, quantum of the punishment as dismissal inflicted upon the workman concerned against the misconduct of absentism appears a little bit harsher and not in proportionate too. So a fresh look at the issue cannot be ruled out.

Though, there is nothing improper, unlawful and wrong-doings if the workman be provided a little bit breather but simultaneously with severe warning to mend. Ultimately in the light of the above, it is ordered for fresh appointment of the workman concerned as Cat. -I with probation up to two years but no back wages, whatsoever.

R. K. SARAN, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2302.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 42/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.09.2017 को प्राप्त हुआ था।

[सं. एल-20012/31/2015-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 25th September, 2017

**S.O. 2302.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 42 of 2015) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 07.09.2017.

[No. L-20012/31/2015-IR (CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), DHANBAD

**Present :** Shri R. K. Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10 (1) (d) of the I.D. Act, 1947

#### REFERENCE NO. 42 OF 2015

**PARTIES :** The Secretary,  
Koyla Ispat Mazdoor Panchyat,  
Post Box No. 59, Jharia, Dhanbad.

**Vs.**

The General Manager,  
W. W Zone of M/s BCCL, PO: Mahuda, Dhanbad

Order No.L-20012/31/2015-IR(CM-I) dt. 09.06.2015.

#### APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : None

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 24<sup>th</sup> July, 2017

### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/31/2015-IR(CM-I) dt. 09.06.2015.

### SCHEDULE

**“Whether the action of the Management of Western Washery Zone of M/s BCCL in denying regularization of S/Sri Rajesh Paswan, Bishnudeo Yadav and Uma Kant Singh as Security Guard is fair and justified? To what relief the concerned workmen are entitled to?”**

2. Neither the workmen concerned nor any one from the Sponsoring Union made appearance on date nor did the Management side too, nor did file the long awaited W.S despite issuance of formal notices dt 26.07.2015 on the addresses of both the parties concerned referred in the Order of the Reference itself. None so far came out as Representative of the Management. The case deals with regularization of the workmen which appeared to have been denied by the Management seeking reliefs.

On maticiouls study of the record concerned it has been absolutely clear the case dates back to the year of 2015 and even after elapse of more than two years the case, it stands to where it was crawling on one stage over the years despite adjournment over more than ten times. It appears that the workmen's own initiatives seem to have paid off as the case stayed to halt over one stage over years. This also points out to the gesture and conduct of the workmen concerned as they are little interested to contest to the instant case to finality through adjudication rather bent upon to get adjournments. In real sense the case has lost its merits and the very existence Industrial Dispute indeed any more seems to has ceased just because silence maintained on their part, for long span of time and, the Tribunal is also of the opinion to let it roll any further will be proved mere wastage of precious time and energy and a hindrance in clearing the backlog of cases. Under these circumstances it would not amount to be unfair, unjust and in line of violation of the natural justice if case is closed on presumption of non-existent of any Industrial Dispute as of now between the parties concerned. Under such circumstance and facts, the case should be wrapped up as no-existent Industrial Dispute any longer owing to sheer disinterestedness of the Union/workman. Accordingly “No Industrial Dispute” Award is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2303.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 43/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.09.2017 को प्राप्त हुआ था।

[सं. एल-20012/32/2015-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 25th September, 2017

**S.O. 2303.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 43 of 2015) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 07.09.2017.

[No. L-20012/32/2015-IR (CM-I)]

M. K. SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), DHANBAD

**Present :** Shri R. K. Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10 (1) (d) of the I.D. Act, 1947

**REFERENCE NO. 43 OF 2015**

**PARTIES** : The Jt. General Secretary,  
Rastriya Colliery Mazdoor Congress,  
M-7/144, Maligarh Dam Colony,  
PO Nudkhurkee, Dhanbad.

**Vs.**

The General Manager,  
Block II Area of M/s BCCL,  
PO:Nawagarh, Dhanbad.

**Order No. L-20012/32/2015-IR (CM-I) dt.09.06.2015**

**APPEARANCES :**

On behalf of the workman/Union : None,

On behalf of the Management : Mr. D.K. Verma, Ld. Advocate

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 07<sup>th</sup> August, 2017

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/32/2015-IR (CM-I) dt.09.06.2015

**SCHEDULE**

Whether the action of the Block II Area of BCCL in denying regularization of Sri Suresh Kumar Mahtha as Loading Supervisor in T & S Grade AI is fair and justified? To what relief the concerned workman is entitled to?"

2. Neither the Union Representative nor the workman concerned is reported to be present on date nor did file the much awaited W.S. despite formal notice dt. 20.07.2015 were sent at the addresses of the both the parties referred in Order of the Reference itself. Mr. D.K. Verma, Ld. Advocate registered his appearance on date not for this time but all along since its inception and rolling out as Reference. The case is all about the denial of the regularization by the Management in T & S Grade AI by challenging the alleged act by seeking reliefs there under.

On perusal of the case record, it has been apparently clear that the Sponsoring Union /workman seems to be in no hurry to file the W.S. despite having availed more than ten adjournments. The tardy pace of case appears to have paid off its purpose as it stayed rolling over filing of the W.S since then. The way, the Union Representative /petitioner walks with the case points to sufficient grounds to believe that they are least interested to get to finality through adjudication rather any further rolling out could be turn out mere wastage of precious time and energy, Simultaneously the Tribunal also do not see violation of the natural justice nor does it continue to be mute spectator. The status of the case, as of now, stands yet be unfolded by not filing even the WS. As such proceedings have been abruptly come to a grinding halt over filing of documents due to disinterestedness of the Union/workman, as the case has lost its merits on this count, the Tribunal cannot let the situation crawl for a long spell of time rather pushing it for final closure in the wider natural interest on presumption of non-existent of issue in real sense. So the case is wrapped up as "No Industrial Dispute". Accordingly an 'Award of No Dispute' is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2304.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स दिल्ली इण्टरनेशनल एअरपोर्ट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 185/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.09.2017 को प्राप्त हुआ था।

[सं. एल-20013/02/2017-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 25th September, 2017

**S.O. 2304.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi (Ref. No. 185 of 2012) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. Delhi International Airport Ltd. and their workmen, which was received by the Central Government on 11.09.2017.

[No. L-20013/02/2017-IR (CM-I)]

M. K. SINGH, Section Officer

### ANNEXURE

**BEFORE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM-LABOUR COURT No. 1, DELHI**

**ID NO. 185/2012**

Shri Chetan Sharma,  
Vill. Rampur, Tehsil Pataudi,  
Distt. Gurgaon Haryana

...Workman

**Vs.**

1. The Management of  
M/s. Delhi International Airport Ltd.  
New Uddan Bhawan, I.G.I. Airport,  
New Delhi – 110037.
2. The Management of  
M/s. Bird Worldwide Flight Services (India) Pvt.Ltd.  
E-9 Connaught House, Connaught Place.  
New Delhi

...Management

### AWARD

1. This is a claim directly filed under section 2 A of the Industrial Disputes Act (in short, the Act) by claimant with the averments that he was appointed as a Loader by management No.2 M/s Bird Worldwide Flights Service (India) Pvt. Ltd. on contractual basis. He has been serving the said management honestly and sincerely. His record is unblemished and he was getting monthly wages Rs.7100/-. However, the management has been violating the labour norms and paying lowest rate i.e. bare minimum wages to the claimant. Thus, the management is indulging in unfair labour practices. It is the case of the claimant that on 25.12.2011 he was performing his duty and official of the management forcibly snatched his photo Identity card without any reason and also asked the claimant not to enter the airport to perform his duty. Since December 25, 2011, the claimant had been reporting to the office of management No.2 for duty demanding his PIC but he has been denied PIC on one pretext or the other. Thereafter claimant served demand notice dated 4.4.2012 on the management for his illegal and unjustified termination of service. The termination of the service of the claimant is without any reason, notice, pay, charge-sheet and enquiry, as such same is unjustified and illegal and is in violation of Section 25-F of the Act. Since management did not file any written reply to the demand notice, as such claimant later on filed the present claim petition.

2. The claim was contested by both the management who filed separate reply thereto. The management No.1, in its reply, took various preliminary objections. On merits, it was alleged that management No.1 is an independent company and had entered into an agreement with M/s Airport Authority of India and accordingly operating the same through its own work force. Management No.1 denied all the material averments made in the statement of claim.

3. The management No.2 filed separate reply and took preliminary objection that claimant was appointed as Loader initially on contract basis for a period of one year w.e.f.1.8.2010 and service of the workman was regularized by the management w.e.f. 1.8.2011 in terms of letter of appointment dated 31.7.2011. It is further alleged that claimant was on duty in the morning shift on 25.12.2011 alongwith his co-worker Shri Bijender and U.H. found a pack of 'Hair Gel' in a container while attending to flight No. 072 at BBA at IGI Airport, New Delhi. Both were found fighting over the possession of the said gel by Team Leader Shri Sanjay Kumar who advised them to stay back at the said belt/ BBA. Shri Sanjay Kumar was also advised to hand over the 'Hair Gel' to CISF staff at IGI Airport. Thereafter Sanjay Kumar took the said Gel to hand over the CISF staff and in the meanwhile, claimant followed him and without any provocation started beating him which led to bleeding from his nose and an inquiry was conducted by the management through its Vigilance Officer who recorded statement of the claimant Chetan Sharma, Sanjay Kumar and Sanjiv Tiwari. Sh.Chetan Sharma in his own handwriting admitted that he was on duty and had assaulted and beaten his senior Sanjay

Kumar which led to bleeding from his nose. Claimant was given full opportunity and having admitted his guilt, as such management vide its letter dated 10.1.2012 terminated the service of the claimant on the ground of above serious charges of mis-conduct. On merits, management denied most of the other averments and reiterated the afore-mentioned averments in most of the paras. It is denied that management has indulged in any unfair labour practices rather the claimant is guilty of suppression of material facts and his mis-conduct is established on record.

4. Against this factual background, this Tribunal on the basis of pleadings of the parties, vide order dated 05.03.13 framed the following issues :

- (i) Whether enquiry conducted by M/s Bird Worldwide Flight Service Pvt. Ltd. was just, fair and proper?
- (ii) Whether punishment of termination of service of the claimant commensurate to his misconduct?
- (iii) Whether the claimant is entitled to relief of reinstatement in service?

5. Both the parties adduced evidence in support of stand taken in their respective pleadings. The claimant in order to prove the case against the management examined himself as WW1 and tendered in evidence affidavit Ex.WW1/A and documents Ex.WW1/1 to WW1/4. The management in order to rebut the case of the claimant examined Shri R.S. Bhatti, Vigilance Officer as MW1, who also tendered in evidence affidavit Ex.MW1/A and documents Ex.MW1/1 to MW1/6. Shri Sanjay Kumar, MW2 has also been examined by the management.

**Issue no. 1, 2 and 3 :**

6. All these issues are taken up together for the purpose of discussion as they are inter-related and can be conveniently disposed of.

7. It is clear from the pleadings of the parties that claimant was initially engaged by the management No.2 M/s Bird Worldwide Flight Services (India) Pvt. Ltd. Terminal III, IGI Airport, as a Loader on contractual basis on 1.8.2010. Even management No.2 has admitted this fact in Para 1 and 2 of preliminary submissions of the written statement wherein it is stated that claimant was engaged for a period of one year w.e.f. 1.8.2010 and subsequently the service of the claimant was regularized by the management ( BWFS) w.e.f. 1.8.2011 in terms of letter of appointment dated 31.7.2011.

8. The letter of appointment of the claimant herein is Ex.WW1/1 which has been issued by the management No.2 BWFS. The said letter is also signed by the authorized signatory of the said management and is dated 31.7.2011. All terms and conditions of the management including basic salary, nature of duty, job, rest etc. are fully mentioned in the said letter. There is also demand notice Ex.WW1/2 given by the claimant to the management No.2 and the receipt thereof is Ex.WW1/3. The certificate of conciliation proceedings is also annexed with this document which shows that conciliation proceedings failed before the Asstt. Labour Commissioner (ALC) and copy of the statement of claim filed before the ALC is Ex.WW1/4.

9. During the course of arguments, it was strongly contended on behalf of the claimant that there is no proper inquiry conducted against the claimant nor any opportunity was given to the claimant to rebut the charges of mis-conduct. It was also urged that so-called admission made by the claimant in his reply Ex.WW1/M2 is not voluntary and same cannot be used against the claimant as he was made to sign this statement by the officials of the management under pressure.

10. Shri R.K.Mehta, Ld. A/R for the management urged that claimant herein has admitted the allegations made against him in the charge sheet as such there was no requirement of conducting any regular inquiry. The management has given him fair opportunity and claimant has voluntarily made a statement before the Inquiry Officer as such claimant now cannot take the plea that he was not given opportunity to adduce the evidence when he has admitted his guilt. Ld. A/R also relied upon certain rulings and I would be referring the same in my discussion in the subsequent para.

11. It is clear from perusal of letter dated 19.7.2010 Ex.WW1/M1 that claimant Chetan Sharma was selected for the post of Loader on contractual basis for the period of one year. This fact during the course of arguments, was not denied by the either party and the main controversy in the present case revolves around the point as to whether fair opportunity has been given to the claimant under the law in respect of mis-conduct committed by him or whether there is any violation of provisions of Section 25 -F of the Act.

12. It is clear from the pleadings of the parties as well as evidence on record that claimant was working with management No.2 and while appearing as WW1 claimant Chetan Sharma has admitted that document Ex.WW1/M1 bears his signatures at points A and B. He has further admitted that document Ex.WW1/M2 is in his hand writing. There is also reference of hair gel pack in the statement of claimant which was found by him belonging to some international passenger. He has also admitted the presence of Sanjay Kumar, Team Leader on the spot. Sanjay Kumar has also been examined by management No.2 who has refer to the detail of assault and injury received by him. No

doubt, management herein has not filed the show cause notice given to the claimant culminating in initiation of inquiry against the claimant. However, writing Ex.WW1/M2 clearly mentions about the incident and claimant has taken the false defence that he was assaulted by Sanjay Kumar which appears to be an afterthought as the claimant has not examined any witness to show that Sanjay Kumar has slapped him. He has also not complained regarding slapping by Sanjay Kumar to any of his superior officer. In such circumstances, merely because management has failed to file show cause notice would not mean that incident has not taken place particularly when the factum of the incident had been admitted in writing Ex. WW1/M1 by the claimant. It is only after the receipt of inquiry report submitted by Mr. R.S.Bhatti that order of termination was passed vide Ex.WW1/M3. Management has also examined Shri R.S.Bhatti, Vigilance Officer who conducted the inquiry, as MW1. Though he admitted that no charge sheet was placed before him but he has conducted the inquiry. Statement of Sanjay Kumar MW2 also prima facie proved the incident of assault as well as bleeding from his nose caused by claimant. Claimant has also admitted in his writing Ex.WW1/M2 regarding the above incident of assault and beating given to Sanjay Kumar by stating that “*maine inke saath maar peet ki*” He further stated that it was his fist mistake for which he is seeking apology. The writing Ex.WW1/M2 appears to this Tribunal to be voluntary and there does not appear any kind of force used by the management so as to procure writing Ex.WW1/M2. Moreover, this is not the case of the claimant either in statement of claim or in his affidavit that at the time of recording of the writing Ex.WW1/M2, any undue influence, coercion or force was used by any official of the management. This writing in my humble opinion, is admission of the guilt/misconduct committed by the claimant and does not require any further proof.

13. Now, the vital question which requires determination is whether there was any necessity of further inquiry when claimant has admitted his fault in his reply particularly when the said reply is in the hand of claimant.

14. In the present case, as discussed above, in fact a formal inquiry has been conducted and there is substantial compliance of principles of natural justice. Therefore, there was no question of serving of notice to the claimant under Section 25 F of the Act. However, claimant is entitled for salary for the period during which he has tendered service.

15. In the case of *Corporation Bank vs. General Secretary & Anr. 2016 LLR 754*, Hon’ble Bombay High Court has held as under :

**“It is settled position of law that once an employee admits the charge and there was no cogent material to show that admission of charges was recorded under duress or by applying force or pressure and that admission as unconditional and in unequivocal terms, no fault could be found on the part of the Enquiry Officer, holding the charges proved against the delinquent employee.”**

Moreover, there are no guidelines, office order issued by the management which require holding of inquiry in a particular manner in case of such incident. Since there is substantial compliance of natural justice as such non –placing of show cause notice on record would not vitiate the inquiry when the factum of guilt is admitted.

16. There is no merit in the contention raised on behalf of the claimant that the statement/reply Ex.WW1/M1 is not voluntary or claimant was forcibly made to sign the same. There is no pleading to this effect in the statement of claim nor there is any circumstance on the record to suggest that statement Ex.WW1/M2 was forcibly got written from the claimant. Moreover, said statement is in the hand of claimant as such the court has to believe the writing/statement Ex.WW1/M2 when claimant has not adduced any evidence that the said statement was obtained by the use of force or any fraud was exercised in obtaining the said statement. In view of this, this Tribunal is of the clear view that there is no requirement for holding a detailed inquiry when the claimant has admitted the allegation of mis-conduct made against him by the management. There is also no cross examination to any of the witness of the management that management has exercised any force or caused any fear to the claimant when he has written in his own hand statement Ex.WW1/M2. It is equally settled principle of law that when a fact has been admitted by a party in the pleadings or otherwise in a statement, the same is not further legally required to be proved. The admission of a fact by a party by itself is substantive evidence of the fact so admitted. The management has examined Shri R.S.Bhatti, Vigilance Officer as MW1 and there is hardly anything in his cross-examination to help the case of the claimant. Though this witness has admitted that no chargesheet was served on the claimant, yet the record clearly shows that he has conducted the inquiry and it is also clear from the record that Shri R.S.Bhatti was appointed as Inquiry Officer in the said inquiry who has recorded the statement of claimant as well as Sanjay Kumar and Sanjiv Tiwari. Statement of Sanjiv Tiwari recorded during domestic inquiry is Ex.WW1/4 and report of the inquiry officer is Ex.MW1/5. The management has also filed letter Ex.MW1/6 where there is mention of the misbehavior of the claimant with Sanjay Kumar. It is thus clear from the perusal of the evidence on record that management has even otherwise proved before this Tribunal by examining Sanjay Kumar MW2 and Shri R.S.Bhatti MW1 that claimant has assaulted and slapped his senior Sanjay Kumar resulting in bleeding from his nose.

17. Now, the other question before this Tribunal is whether the termination of service of the claimant commensurates to his misconduct. In this regard, Id. A/R for the management heavily relied upon the case of **Uttar Pradesh Road Transport Corporation Vs. Subhash Chander Sharma, MP AIR 2005 SC 1924**.

18. I have carefully gone through the ratio of the above authority and there is hardly any quarrel with the proposition of law propounded in the said authority. In **Subhash Chand** case (Supra) the delinquent employee was a driver in Corporation and charge against him was that he in a drunken state along with conductor went to the room of Asstt. Cashier and demanded money from the said Cashier. When Asstt. Cashier refused, the driver threatened and assaulted him and also hurled abuses against the Asstt. Cashier. Inquiry was conducted and misconduct was proved against the driver. He was formally removed from the service. However, the labour court interfered with the finding of removal. In a reference made at the instance of said driver to the Industrial Court, the industrial Tribunal held that punishment of removal was excessive and same was set aside by the Tribunal whereby punishment of removal was reduced to one increment and payment of 50% back wages. The Hon'ble High Court in Writ Petition upheld the award of the Tribunal and management finally approached the Hon'ble Apex Court who set aside the judgment of the Hon'ble High Court as well as award of the Tribunal and the punishment of removal was upheld. It was observed that by the Hon'ble Apex Court that the labour court was not justified in interfering with the order of removal of respondent from the service when the charge against him was proved. The discretion used by the labour court in the circumstances of the case was held to be arbitrary and capricious. It was further held that the court in such case cannot interfere unless the punishment was "shockingly disproportionate" to the misconduct.

19. Similar view appears to have been taken in the case of **Management of Karur Vysya Bank Ltd. Vs. S. Balakrishnan**, 2016( 12) SCC 221.

20. In **MPEB vs. Jagdish Chander Sharma**, AIR 2005 Supreme Court 1924 the Hon'ble Apex Court was dealing with the case of workman on muster roll who had allegedly assaulted his superior officer, a Sub-Engineer and hit with a tension screw on his back resulting in bleeding and serious injury in the nose. The service of the workman was terminated on the basis of inquiry conducted by the management and at the instance of workman reference was made to the labour court. The labour court took the view that punishment of termination imposed upon the workman was punitive in nature and workman had been kept out of his service since long after his termination as a result of which order of termination was set aside and workman was reinstated without back wages. The management took the matter to the High Court who upheld the order of the labour court. Finally, matter was taken in appeal to the Hon'ble Apex Court where the question was whether the interference with the punishment awarded by the Competent Authority by the labour court was justified or awarding of the punishment was harsh and disproportionate where charges of assault are proved against the workman or the same warranted any kind of interference by the labour court. The Hon'ble Apex Court observed that the allegations regarding hitting of his superior officer resulting in injuring and bleeding from his nose is serious charge against the delinquent employee and the punishment has to be proportionate to the gravity of the offence. The Apex Court also laid down that the discipline at work place in any organization is sine qua non for the efficient working of the organization. When an employee committed breach of discipline, he is not entitled for any sympathy. In the present case also, claimant has assaulted the team mate and caused bleeding in the nose. Resultantly, punishment cannot be said to be harsh.

21. During the course of arguments on behalf of workman, it was urged that termination was in violation of section 25-F of the Act. To my mind, in the present case, there is no question of applicability of section 25-F of the Act. Admittedly the service of the claimant had not been retrenched without reason as is clear from the record, service of the claimant has been terminated for the reason that he had committed mis-conduct which has been proved on record. In such circumstances there is no question of applicability of provisions of section 25-F which has no application to a case when after due inquiry, the management has dispensed with the service of workman. Had there been no inquiry and service would have been terminated without any show cause notice or one month salary in lieu of such notice, in that eventuality, there could have been force in the plea of the claimant. Therefore, order of termination cannot be said to be a simpliciter order of retrenchment in violation of Section 25-F of the Act and the claimant herein has committed misconduct which has been proved on record.

22. The net result of the discussion is that claimant herein has been removed/terminated from service in accordance with a valid inquiry conducted by management No.2 and punishment of termination awarded to the claimant appears to be disproportionate to the misconduct as commensurate to the misconduct committed by the workman. In such circumstances, there is no question of granting relief of reinstatement to the claimant herein.

23. It was brought to the notice of this tribunal that claimant has not been paid his salary for the months of October, November and December 2011 and Ld. A/R for the management stated at the bar that in record, said salary has not been paid. Management is ready and willing to pay his salary upto the date of termination 25.12.2011, if any, to which claimant is entitled. Let a copy of this Award be sent for publication as required under section 17 of the Act.

Dated : 06.09.2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2305.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सेन्ट्रल वेयरहाउसिंग कार्पोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 06/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2017 को प्राप्त हुआ था।

[सं. एल-42011/14/2016-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 25th September, 2017

**S.O. 2305.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2017) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Central Warehousing Corporation and their workman, which was received by the Central Government on 19.09.2017.

[No. L-42011/14/2016-IR (M)]

RAJESH KUMAR, Under Secy.

### ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 2, KARKARDOOMA COURT COMPLEX, DELHI**

**ID. NO. 06/2017**

General Secretary,  
Federation of CWC Employees Union,  
WZ-677, Shiv Nagar Extn., Jail Road,  
New Delhi-110058

...Workman

### Versus

The General Manager (Pers.),  
m/s Central Warehousing Corporation ,  
4/1, Siri Industrial Area,  
August Kranti Marg, Hauz Khas,  
New Delhi -110016

...Management

### AWARD

In the present case, a reference was received from the appropriate Government vide letter No.L-42011/14/2016-IR(M) dated 06.03.2017 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

“Whether the action on the part of management of CWC to discontinue abruptly the ACP Scheme in 2009 and again introducing it w.e.f 01.07.2012 caused loss to the employees of CWC during the intervening period? If yes, what relief the employees are entitled to?”

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute.
3. On receipt of the above reference, notice was sent to the claimant union as well as the managements. Neither the postal article sent to the claimant union referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant union. Despite service of the notice, claimant union opted to abstain away from the proceedings. No claim statement was filed on behalf of them. Thus, it is clear that the workman union is not interested in adjudication of the reference on merits.

4. Since the workman union has neither put in their appearance nor have they led any evidence so as to prove their cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : September 07, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2306.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सेन्ट्रल वेयरहाउसिंग कार्पोरेशन एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 188/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2017 को प्राप्त हुआ था।

[सं. एल-42011/17/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 25th September, 2017

**S.O. 2306.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 188/2015) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Central Warehousing Corporation and others and their workman, which was received by the Central Government on 19.09.2017.

[No. L-42011/17/2014-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 2, KARKARDOOMA COURT COMPLEX, DELHI**

**ID. NO. 188/15**

Shri Makhsood Ahamad S/o Sh. Ilatijahusen,  
Through General Mazdoor Lal Jhanda Union,  
B-1/A, Nathu Colony (East), 100 Foota Road,  
Delhi-110093

...Workman

#### Versus

1. The Manager,  
Aqdas Maritime Agency Pvt. Ltd. 32/33,  
Eastern Chamber, 4<sup>th</sup> Floor, 128-A,  
Nandlal Jani Marg, (Poona Street),  
Mumbai-400009.
2. The managing Director,  
Central Warehousing Corporation,  
4/1, Siri Fort Industrial Area,  
August Kranti Marg, Hauz Khas,  
New Delhi -110016.
3. The Regional Manager,  
Central Warehousing Corporation,  
Scope Minar, First floor, Laxmi Nagar,  
New Delhi -110092.
4. The Manager,  
M/s Suman Forwarding Agency Pvt. Ltd.  
ICD, Near Gazipur Village, Patparganj,  
Delhi -110096

...Management

**AWARD**

In the present case, a reference was received from the appropriate Government vide letter No.L-42011/17/2014 (IR(M)) dated 13.02.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

“Whether termination of Shri Makhsood Ahamad S/o Ilatijahusen, w.e.f. 03.01.2013 by the management No. 4 i.e. Suman Forwarding Agency Pvt. Ltd. without making payment of legitimate dues is just, fair and legal? If not what relief will be given to the workman and from which date?” Whether the management Nos. 1 & 2 i.e. Central Warehousing Corporation is responsible to ensure and secure continuance of employment of Shri Makhsood Ahamad S/o Ilatijahusen in the establishment of new contractor appointed for undertaking the job of such contractor i.e. management No. 3 M/s Aqdas Maritime Agency Pvt.Ltd. If not what relief workman concerned is entitled to?

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : September 07, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2307.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सेन्ट्रल वेयरहाउसिंग कार्पोरेशन एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 184/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2017 को प्राप्त हुआ था।

[सं. एल-42012/18/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 25th September, 2017

**S.O. 2307.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 184/2015) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Central Warehousing Corporation and others and their workman, which was received by the Central Government on 19.09.2017.

[No. L-42012/18/2014-IR (M)]

RAJESH KUMAR, Under Secy.

**ANNEXURE**

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 2, KARKARDOOMA COURT COMPLEX, DELHI**

**ID. NO. 184/2015**

Dhananjay Singh S/o Late Shri Nageshwar Singh,  
Through General Mazdoor Lal Jhanda Union,

B-1/A , Nathu Colony (East), 100 Foota Road,  
Delhi-110093

...Workman

**Versus**

1. The Manager,  
Aqdas Maritime Agency Pvt. Ltd. 32/33,  
Eastern Chamber, 4<sup>th</sup> Floor, 128-A,  
Nandlal Jani Marg, (Poona Street),  
Mumbai-400009.
2. The managing Director,  
Central Warehousing Corporation ,  
4/1, Siri Fort Industrial Area,  
August Kranti Marg, Hauz Khas,  
New Delhi -110016.
3. The Regional Manager,  
Central Warehousing Corporation,  
Scope Minar, First floor, Laxmi Nagar,  
New Delhi -110092.
4. The Manager,  
M/s Suman Forwarding Agency Pvt. Ltd.  
ICD, Near Gazipur Village, Patparganj,  
Delhi -110096

...Management

**AWARD**

In the present case, a reference was received from the appropriate Government vide letter No.L-42012/18/2014 R(M) dated 27.08.2014 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

“Whether termination of Shri Dhananjay Singh S/o Late Shri Nageshwar Singh, , w.e.f. by the management No. 4 i.e. Suman Forwarding Agency Pvt. Ltd.03.01.2013 without making payment of legitimate dues is just, fair and legal? If not what relief will be given to the workman and from which date?

“Whether the management Nos. 1 & 2 i.e. Central Warehousing Corporation is responsible to ensure and secure continuance of employment of Shri Dhananjay Singh S/o Late Shri Nageshwar Singh, in the establishment of new contractor appointed for undertaking the job of such contractor i.e management No. 3. If not what relief workman concerned is entitled to?”

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file his claim statement with the Tribunal.
3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.
4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : September 07, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2308.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय

सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 33/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को

16.09.2017 को प्राप्त हुआ था।

[सं. एल-17012/42/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 25th September, 2017

**S.O. 2308.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 16.09.2017.

[No. L-17012/42/2013-IR (M)]

RAJESH KUMAR, Under Secy.

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Sri Muralidhar Pradhan, Presiding Officer

Dated : the 21<sup>st</sup> day of August, 2017

### INDUSTRIAL DISPUTE No. 33/2014

#### Between :

Sri P. Edukondalu,  
S/o P. Venkata Rao,  
D.No.2-148, Kankepudi (P.O.),  
Pedana (M), Krishna District

...Petitioner

#### AND

1. The Sr. Divisional Manager,  
LIC of India, Divisional Office,  
Kennedy Road, Machilipatnam.
2. The Divisional Manager,  
LIC of India, Divisional Office,  
Kennedy Road, Machilipatnam

...Respondents

#### Appearances :

For the Petitioner : Party in person

For the Respondent : Sri K. Ramalingeswara Sarma, Advocate

### AWARD

The Government of India, Ministry of Labour by its order No.L- 17012/ 42/2013-IR(M) dated 18.2.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workman. The reference is,

### SCHEDULE

“Whether the removal from service of Sri P. Yedukondalu, Ex-Temp. Class.IV LIC of India, Machilipatnam Divisional Office w.e.f. 21.1.2013 is legal and justified? If not, what other relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 33/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.
3. In spite of service of notices to the address given in the reference order, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute his case by filing claim statement. But

the Petitioner failed to attend this Tribunal which clearly indicates that perhaps the Petitioner is not interested to prosecute his case and perhaps the dispute of the Petitioner has already been settled and the Petitioner has nothing to claim. Hence, a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this 21<sup>st</sup> day of August, 2017.

MURALIDHAR PRADHAN, Presiding Officer

#### Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

#### Documents marked for the Petitioner

NIL

#### Documents marked for the Respondent

NIL

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2309.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ए. सी.सी., सिंदरी सीमेंट वर्क्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 48/2012, 50/2012 व 51/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.09.2017 को प्राप्त हुआ था।

[सं. एल-29012/31/2012-आईआर (एम),

सं. एल-29012/33/2012-आईआर (एम),

सं. एल-29012/32/2012-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 25th September, 2017

**S.O. 2309.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 48/2012, 50/2012 & 51/2012) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. ACC, Sindri Cement Works and their workman, which was received by the Central Government on 16.09.2017.

[No. L-29012/31/2012-IR (M),

No. L-29012/33/2012-IR (M),

No. L-29012/32/2012-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

#### Reference No. 48/2012, 50/2012 & 51/2012

Employers in relation to the management of M/s. ACC, Sindri Cement Works

AND

Their workman

**Present :** Shri R. K. Saran, Presiding Officer

#### Appearances :

For the Employers : Shri D.Mukherjee, Advocate

For the workman : Shri R.R.Ram, Advocate

Industry : Cement

Dated- 29/08/2017

### AWARD

By order No. L-29012/31/2012/IR (M) dated 11/10/2012, the Central Government in the Ministry of Labour has in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal :

### SCHEDULE

**“Whether the action of the management of M/S ACC, Sindri Cement Works, Sindri in dismissing the services of Shri Rajendra Prasad, Clerk vide order dated 26/09/2011 is legal and justified? what relief the workman is entitled to?”**

### Reference No. 50/2012

Order No.L-29012 /33/2012/IR (M) dated 11/10/2012,

### SCHEDULE

**“Whether the action of the management of M/S ACC, Sindri Cement Works, Sindri in dismissing the services of Shri Ajit Kumar Singh, Tally Checker vide order dated 26/09/2011 is legal and justified? what relief the workman is entitled to?”**

### Reference No. 51/2012

Order No.L-29012 /32/2012/IR (M) dated 11/10/2012,

### SCHEDULE

**“Whether the action of the management of M/S ACC, Sindri Cement Works, Sindri in dismissing the services of Shri Manoj Singh, Tally Checker vide order dated 26/09/2011 is legal and justified? what relief the workman is entitled to?”**

2. The case is received from Ministry of Labour. After receipt of these reference both parties are noticed. The workmen files written statement. The management files their written statement. Thereafter rejoinder and documents filed by the parties. Three witnesses examined on behalf of the management. Documents of the management is marked as M-1 & M-2 series. Since all the cases are similar, it is heard analogously.
3. The case of the workman of Sri Rajendra Prasad Ref No. 48/12 is that, he entered into organization in 1992 as General Mazdoor on casual basis, seeing his performance in duty and sincerity the management regularize his service w.e.f.01.04.2003 as Bag clerk in packaging Department. Thereafter he posted in purchase Department in the year 2006 and again posted in weigh Bridge cum cement dispatch section in 2007, where his main function and duty was weigh the truck loaded with clinker and allow to go inside the factory.
4. It is further submitted by the workman that the function of weigh bridge man is when truck loaded with clinker is reported by the truck Driver of the said truck at the Gate then duty and function starts what to do with the truck loaded with clinker.
5. Thereafter challan of materials in duplicate handed over to truck Driver and accordingly after weighting the truck, Gross weight is recorded on the challan with stamp. Thereafter the loaded truck allowed to be entered into the factory for unloading the clinker alongwith a copy of challan.
6. The management served a chargesheet on 15<sup>th</sup> Nov. 2010 alleging that on 8<sup>th</sup> and 9<sup>th</sup> Nov. 2010 on a surprise check of the incoming trucks loaded with clinker physical stock verification of clinker at site was verified and compared there was huge difference between the weight of clinker as recorded by the workman alongwith co-workers. It is alleged that quantity of clinker actually received was less than what was shown.
7. In the chargesheet it is alleged that the workman deliberately and dishonestly making false entries of the weightment of clinker in the company's record. The allegation alleged is away from truth. There is no evidence regarding incorrect recording in register. The report and proceeding is not fair and proper and it is vague and not correct. Hence the management did not lodge FIR or complaint against the concerned workman but the management dismissed him w.e.f 26<sup>th</sup> Sept. 2011. Prior to dismissal of the service the management has not issued any warning letter or show cause for any misconduct but enquiry was conducted.
8. The case of the Ajit Kumar Singh Ref. No. 50/12 is that The concerned workman is a permanent workman of ACC Sindri works Ltd and designated as Tally Checker but suddenly the management issued a chargesheet alleging that a huge difference between the weight of clinker as recorded by him which amounts to dishonest act of making

entries of the weightment of clinker in the company's record. Consequently loss of production, shortage of clinker and extra payment made to the parties.

9. But the factual position is that the clinker was loaded on stock and his duty only was to check loaded trucks and was to record it in the company's register which is verified by his superior. The charges leveled against him is far from truth and the said charges are baseless, fabricated and not proved by the enquiry officer but the management illegally dismissed him from services on 26.09.2011. But prior to dismissal from service the management neither issued any chargesheet for any misconduct nor any show cause or warning letter issued. Hence dismissal is totally illegal and unjustified.

10. And **the case of the workman Sri Manoj Kumar in Ref case No. 51/12** is that the concerned workman is permanent worker having employee no 160508, after satisfied in his work and sincerity the management assigned him to do the job of tally checker since 1998. But in the meantime the management issued chargesheet alleging that the huge difference between the weight of clinker as recorded by me which is dishonest act of making entries of the weightment of clinker in the company's record, shortage of clinker and extra payment made to the party which gave financial loss to the company. The charges leveled against him is far away from truth.

11. Thereafter enquiry set up and the enquiry Officer could not prove the charges, but the management dismissed him w.e.f 26<sup>th</sup> Sept. 2011. But prior to the dismissal the management never issued any warning letter or show cause letter, which is not fair and justified.

12. On the other hand the case of the management is that the concerned workman Sri Rajendra Prasad was engaged by the management as clerk by placing full trust and confidence on him but the concerned workman miserably failed to discharge his duty of trust and faith which was come to the notice of the management on surprise audit check and after receiving audit report the management detected Sri Rajendra Prasad alongwith other were involved in theft, fraud and dishonesty with the company's business and property.

13. The management after going through the audit report and after conducting preliminary investigation found that the integrity of Sri Rajendra Prasad the concerned workman and others is questionable, so to investigate the matter at length after giving proper opportunity the management decided to issued a chargesheet to him for committing misconduct under clause 15(4),15(5) 15(13)and 15 (21) of certified standing orders. Thereafter the management by issuing chargesheet suspended him from duty pending enquiry with immediate effect.

14. Thereafter the enquiry officer after conducting the enquiry, giving full opportunity, the enquiry officer submitted his report holding the concerned workman guilty in all the charges leveled against him.

15. The management found the concerned workman committed grave misconduct and the management lost confidence and faith on him, In view of the aforesaid facts the authority dismissed the concerned workman from service by letter dated 26.09.2011 with immediate effect.

16. It is further submitted by the management that Sri Ajit Kr. Singh, Manoj Singh, Rajendra Prasad, Shamin Ansari and Surendra Ram are working at weighbridge under Cement dispatch section and are responsible for checking the weightment of inbound and out bound trucks of material, recording them in company's register and any other work incidental there to.

17. On 8<sup>th</sup> & 9<sup>th</sup> Nov.2010 a surprise audit of the incoming trucks loading with clinker & physical stock verification of clinker at site, was carried out by a team. The stock verification was for the clinker received between 30.10.2010 and 10.11.2010, a part of the audit, physical stock verification of the clinker was compared with the figures mentioned in the company's register maintained by all concerned workman alongwith others. The audit team found a huge difference between the weight of clinker as recorded by concerned workman alongwith all concerned workman with others. Hence the enquiry was set-up and after enquiry proceeding the enquiry officer followed the provision of natural justice and submitted the enquiry report found all are guilty of grave misconduct.

18. Thereafter the management considering the gravity and seriousness of the charges, the authority was left with no other alternative but to dismiss the concerned workmen from service w.e.f 26.09.2011.

19. The charges against workmen is loss of material required for manufacturing cement. On that charges, charge sheet was issued against the workmen, enquiry was held. The workmen participated in the enquiry and after the enquiry, the workmen found guilty and all three workman were dismissed after due service of notices.

20. All three workmen raised industrial dispute individually and after evidence the enquiry against the workmen held fair and proper, argument heard, The workmen pleaded their innocence and the management submitted that the Tribunal has limited power to see the punishment awarded to the workman. Whether that is proportionate or not. But while seeing the proportionate of the punishment the Tribunal has authority to scrutinise the evidence of the parties. Even the Tribunal can act as an appellate authority of the enquiry officer. Before appreciating of the evidence it is felt

to quote the cross-examination portion of the all evidence i.e MW-1 Shri Charanjeet Singh Birdi, G.M mechanical says that

**“ The workmen never worked under me. The materials were weight from inside the factory. I can not say what the works were done by the workman. The workmen participated in the enquiry. I only presented documents before the enquiry Officer. I did not got the management witnesses examined. But they were examined by the E.O. I cannot say what was the duty of the workmen. The E.O has already left the company.**

Xxx

21. The cross examination of MW-2, Sri Uttam Singh, G.M Production is quoted below:-

**“The materials were loaded at ACC Chaibasa. It was also weighed there. We also weigh the material here. The material came open in truck having maximum 25 mm size. We are admitting 5% shortage at receiving point. To my knowledge there is no loss on the way while transit. While transit the material can be pilfered, or theft. From challan it will be known what is the weight at chaibasa and what is here and the loss . No challan is filed. Record is with production dept. I was not connected with enquiry and I am deposing on the basis of record.**

**The workmen were posted at Sindri and they accompanied in the material truck. Weighment at sindri is done within factory premises. Our factory is under security coverage. In our factory premises there is no chance of theft. Materials carried from chaibasa to Sindri by truck and in the truck only driver and Helper stay. The concerned workmen never accompany any material truck.**

22. The cross examination of MW-3 namely sri Narendra Sahu, Manager Civil is quoted below:-

**“Material come from chaibasa . It also comes it from railway rack. The workmen concerned were not responsible to check stock. Stock comes to production deptt. The workman had no link with production deptt. The workmen has only to check weight of the materials. At the time of loading the concerned workmen had no role. Inside the plant materials are within the plant security. During duty workmen were not allowed to go outside.”**

23. From the above evidence of the witness, The materials are loaded in chaibasa and unloaded at sindri at the premises of factory, and weigment is also done at sindri factory premises , and factory premises is under security coverage. It is also admissible that 5% loss is admitted at receiving point. Material comes in open truck without any security. As per admission by witnesses of management, it is also admitted that the workman has only to check weight of material. In our factory premises there is no chance of theft. In the security coverage how the workmen steal the material. It is felt that workmen is dismissed intentionally, without examining the merit of the case and enquiry was done.

24. In this case management lost the confidence and faith on them, hence the disciplinary authority dismissed the concerned workmen from service by letter dated 26.09.2011 with immediate effect. In this context The Hon'ble Supreme Court held that when the management lost confidence in the employee he can certainly be placed in a department where he has nothing to do with the monetary transaction such as establishment section. And passed reinstatement with continuity of service, without loss of seniority. (SC, civil appeal No. 1338 of 1998 dated 6 Feb. 1995)

25. It is crystal clear that the workmen have no hand in theft or pilferage. The materials are guarded by security personnel and weighment are made. To calculate the exact loss, the Transit challan is to be filed and the same has not been filed in the case as told by MW-2 MW-3.

26. Hence the workmen had no role during loading of the materials, and inside the factory, the materials are kept under security cover and workmen are not allowed to visit there. This may be the situation, the dismissal is totally illegal and they are to be reinstated. In the meantime one of the workmen has expired. Therefore the dismissal is totally bad. It is set- a side. The workmen who is alive be reinstated with full back wages and the deceased workmen be given full back wages during the period of dismissal, and his heir be given job in compassionate ground.

27. Considering the facts and circumstances of this case, I hold that the action of the management of M/S ACC, Sindri Cement Works, Sindri in dismissing the services of Shri Rajendra Prasad, clerk, Ajit Kumar Singh, and Shri Manoj Singh Tally Checker vide order dated 26/09/2011 is not justified Hence they be reinstated with full back wages and the deceased workman be given full back wages during the period of dismissal, and his heir be given job on compassionate ground within 30 days after publication of award in the official gazette.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2310.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत पेट्रोलियम कार्पोरेशन लिमिटेड एवं अन्य के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 57/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2017 को प्राप्त हुआ था।

[सं. एल-30012/3/2010-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 25th September, 2017

**S.O. 2310.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2010) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Ltd. and other and their workman, which was received by the Central Government on 22.09.2017.

[No. L-30012/3/2010-IR (M)]

RAJESH KUMAR, Under Secy.

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI****PRESENT : M.V. DESHPANDE, Presiding Officer****REFERENCE NO.CGIT-2/57 of 2010**

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

BHARAT PETROLEUM CORPORATION LTD. &amp;

M/S. EXPO GAS CONTAINERS LTD.

1. The Dy. General Manager (HRS) West,  
Bharat Petroleum Corp. Ltd.,  
4&6, Bharat Bhawan, Currimbhoy Road,  
Ballard Estate, P. B. No.688,  
Mumbai – 400 005.
2. M/s. Expo Gas Containers Ltd.,  
Expo House, 150, Sheiff Devji Street,  
Mumbai – 400 003

**AND**

THEIR WORKMEN

Shri Maganlal T. Patel,  
Shankar Dawol, Anik Gao,  
Mahul Road, Chembur,  
Mumbai – 400 074.

**APPEARANCES :**

FOR THE EMPLOYER (1) : Mr. R.S. Pai, Advocate  
(2) : Mr. M.B. Anchan, Advocate  
FOR THE WORKMEN : Mr. D.K. Sinha, Advocate

Mumbai, dated the 8<sup>th</sup> August, 2017.**AWARD**

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour &

Employment, New Delhi vide its order No. L-30012/3/2010 – IR (M) dated 15.06.2010. The terms of reference given in the schedule are as follows :

“Whether the action of M/s. Expo Gas Containers Ltd., a contractor of M/s. BPCL in discontinuing Shri Maganlal T. Patel from their services w.e.f. 11.3.2009 is legal and justified ? What relief the workman is entitled to ?“

2. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives.
3. Second party workman filed statement of claim Ex.12. According to the second party workman, he had been in the employment of the employer since October 2006 as an Electrician on the salary of Rs.6,000/- p.m. During the entire period of his employment with the said employer, his record of service is clean and un-blemished. He was paid monthly wages. However, he was not paid bonus. The first party employer has deducted PF contribution from 2006 but PF slip was not given to him. The first party employer has issued attendance card but at the time of paying salary first party employer used to collect the card. The first party employer has issued gate pass-cum-identity card to him. However, the employers are in habit of changing the employees from one company to another company and as such the concerned workman came to be victimized in the manner set out herein.
4. According to concerned workman, 21 days privilege leave was due since 2006 – 09. However, the employer told him not to report on duty on 11.3.2009 and as such he was orally terminated by the Manager on 11.3.2009. He was not allowed to report on duty. He was not paid legal dues at the time of termination. He was not given memo. No charge sheet was issued nor enquiry was held. As such his termination is illegal.
5. According to the concerned workman, he has submitted statement of justification before the Commissioner of Labour [Tardeo]. The Commissioner of Labour [Tardeo] has issued notice to him & on employer but the employer remained absent during the conciliation proceedings. During the conciliation proceedings the first party employer has given offer to the concerned workman on 23.11.2009 or on before the Commissioner for settlement of the dispute on payment of Rs.35,000/- but then the conciliation failed and the matter is referred to this tribunal for adjudication.
6. According to the concerned workman, the termination of his service amounts to retrenchment. While retrenching him he was not paid retrenchment compensation, notice pay etc. He has been therefore victimized by terminating his services. His termination is against the principles of natural justice in as much as he was not given an opportunity to have his say in the matter and no enquiry was held. The punishment given to him is grossly disproportionate. He is therefore asking for reinstatement with full back wages, attendant benefit and continuity of service w.e.f. 11.3.2009 and earned wages for 11 days.
7. M/s. Expo Gas Containers Ltd. has resisted the claim by filing written statement Ex.13. According to the said company the reference itself is not maintainable. It is contended that services of the concerned workman has not been terminated by the company and therefore the reference is bad in law and liable to be rejected.
8. It is then contended by the company that it has entered into the contract with M/s. BPCL for specialized job work involving electrical works. The concerned workman came to be engaged by the company for the job as an Electrician on an adhoc and temporary basis from 18.11.2006. He was working as a freelancer Electrician. He was receiving the amount of Rs.6000/- [Approx.] for the work carried out by him. He was working under the control and supervision of the company. However, the concerned workman stopped reporting for work after 11.3.2009 on account of certain affairs which he had with a lady of the locality and the quarrel he had with that lady. As such on account of some personal reasons the concerned workman stopped attending the work from 11.3.2009. There was no need for holding an enquiry against the concerned workman in as much as company has never initiated any disciplinary action against him nor terminated his services as alleged. The concerned workman has abandoned his services w.e.f. 11.3.2009.
9. According to the company since the concerned workman has abandoned his services, he is not entitled to any relief. The company has therefore sought the rejection of reference.
10. The first party employer has also filed written statement Ex.14 contending therein that the concerned workman was working with M/s. Expo Gas Containers Ltd. with which the corporation had entered into a contract on principal to principal basis for specialized job works involving electrical works. There is no relationship of master and servant or an employer-employee in between the corporation and Maganlal Patel. As such the reference would not constitute the industrial dispute within the meaning of section 2 (k) of I.D. Act, 1947. It is then contention of the first party employer that corporation had entered into a contract with M/s. Expo Gas Containers Ltd. for providing specialized electrical works. Shri Patel was employed by the company as a freelancer Electrician on consideration mutually agreed between them. In view of that first party company is not necessary party to the reference. The reference relates to inter-se dispute between M/s. Expo Gas Containers Ltd. and Shri Patel and therefore the reference is not maintainable as against BPCL.

11. Following issues were framed at Ex.15. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the second party is a workman and whether there exists employee-employer relationship between the Second party workman and the First Party Company ?	No
2.	If yes, whether the termination of services of the Second party workman is legal and justified ?	Does not survive
3.	If not, whether the Second party workman is entitled to be reinstated in service with full back wages ?	No
4.	What relief the workman is entitled to ?	No
5.	What Order ?	As per final order

### REASONS

#### Issue No. 1 to 4

12. The concerned workman after filing the statement of claim remained absent. He has not adduced any evidence nor produced the documents on record to establish his claim.

13. So far contentions go, it is contention of the concerned workman that he was employed by BPCL as an Electrician in 2006 on the salary of Rs.6000/- p.m. However, there is no document on record to show that he was appointed by BPCL. As such there is no evidence oral or documentary on behalf of the concerned workman to establish his relationship with first party company i.e. BPCL as employer-employee. For want of evidence it will have to be said that the second party workman has failed to establish that there exists employer-employee relationship between the second party workman and first party company.

14. On going through the written statement of M/s. Expo Gas Containers Ltd. it appears that the company had entered into the contract with M/s. BPCL and then the concerned workman came to be engaged by the said company for the job as an Electrician on an adhoc and temporary basis from 18.11.2006 and then it is clear from the written statement of M/s. Expo Gas Containers Ltd. that the services of the concerned workman has not been terminated. He was not stopped from attending the work but then the concerned workman on his own abandoned the job. This sort of contention of M/s. Expo Gas Containers Ltd. has not been denied by the concerned workman by adducing oral evidence or by producing the documents to disprove such contentions of M/s. Expo Gas Containers Ltd. The fact remains that the concerned workman was not employed by M/s. BPCL [first party company]. He was not employee of the said company. He was employed by the contractor i.e. M/s. Expo Gas Containers Ltd. and then the concerned workman abandoned the job on his own. As such there is no termination of the services of concerned workman. In view of that it will have to be said that the concerned workman has not established that his services came to be terminated illegally.

15. In view of my findings above, it will have to be said that the second party workman is not entitled to be reinstated. From the written statement and the pleadings on record, it appears that the workman was engaged as an Electrician on contract basis from 18.11.2006 for electrical maintenance work. The first party No.2 M/s. Expo Gas Containers Ltd. is a contractor of the first party No.1. The workman was engaged as an Electrician and from 9.3.2009 since the concerned workman stopped attending duties, it will have to be said that he had abandoned the work. In view of that the concerned workman is not entitled to any relief. He is not entitled to reinstatement in service with back wages etc. All the above issues are therefore answered accordingly as indicated each of them in terms of above observations.

#### Issue No. 5

16. In the result, I pass the following order.

### ORDER

Reference is rejected with no order as to costs.

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2311.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत पेट्रोलियम कार्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 42/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.09.2017 को प्राप्त हुआ था।

[सं. एल-30012/21/2015-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 25th September, 2017

**S.O. 2311.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2015) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Ltd. and their workman, which was received by the Central Government on 25.09.2017.

[No. L-30012/21/2015-IR (M)]

RAJESH KUMAR, Under Secy.

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

**PRESENT :** M.V. DESHPANDE, Presiding Officer

**REFERENCE NO.CGIT-2/42 of 2015**

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

BHARAT PETROLEUM CORPORATION LTD.

3. The Dy. General Manager (HRS) West,  
Bharat Petroleum Corp. Ltd.,  
Bharat Bhawan, 4&6, Currimbhoy Road,  
Ballard Estate, P. B. No. 688,  
Mumbai – 400 001.

**AND**

THEIR WORKMEN

The General Secretary,  
Petroleum Employees Union,  
Tel – Rasayan Bhavan, Tilak Road,  
Dadar (E), Mumbai – 400 014.

#### APPEARANCES :

FOR THE EMPLOYER : -----

FOR THE WORKMEN : Mr. B.V. Kargutkar, Advocate

Mumbai, dated the 9<sup>th</sup> August, 2017

### AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-30012/21/2015 – IR (M) dated 21.07.2015. The terms of reference given in the schedule are as follows :

“Whether the action of M/s. BPCL, Western Region, Mumbai in terminating the services of Shri B. B. Waje, Staff No. 34076, Light Vehicle Driver, w.e.f. 02.07.2012 vide order dated 25.06.2012 is just and legal ? If not, what relief the workman is entitled to ?“

2. After the receipt of the reference, both the parties were served with the notices.

3. Second party workman filed statement of claim Ex.4. According to the second party workman, he was working as a Driver and his services came to be terminated as on 2.7.2012 at the age of 52 years. It is his case that the charge sheet which was issued to him was dubious. He was charged for committing the act of subversive of discipline, habitual breach of standing order or law applicable to the establishment and willful falsification of corporation record. According to him his personal loan account is mainly because his family members namely wife and son were in bad patch of life saving medical treatment. He had to incur major medical expenses. He accordingly informed to the management that he was settling all personal loan accounts but then he was charged vide charge sheet dated 28.12.2010 stating therein about sanctioned house loan of Rs.10 lakhs dated 25.11.2005 of IDBI bank, Khargar Branch for booking flat at Khargar, Navi Mumbai for himself. He was having no connection with the concerned transaction except that he handed over all genuine documents duly signed as needed by the bank as per the instructions of the agent namely M/s. Shreeji Realtor & Builder.
4. So according to concerned workman, the enquiry was not held as per the procedure and natural justice.
5. It is also a case of concerned workman that he was mentally tortured, insulted and humiliated by the Manager of Sewree plant namely Mr. R. Sunderesh who on 4.3.2011 forcefully pulled the hand break of running car while he was driving the same which resulted in accident.
6. It is thus the case of concerned workman that the enquiry proceeding was fabricated. It was unfair and illegal. He is therefore asking for reinstatement with immediate effect. He is also claiming amount of Rs.31,83,586/- + other pending dues along with interest and cost of Rs.1 lakh for mental and physical harassment and cost of Rs.75,000/- for presenting cases before various authorities.
7. Notice was served on the opposite party, Principal Officer of M/s. BPCL. However, he remained absent and reference proceeded without his written statement.
8. The concerned workman has filed documents below Ex.8. He has also filed the affidavit at Ex.5. In his affidavit he has reiterated the same facts which he has stated in his statement of claim. Since no one appeared on behalf of the first party, he has not been cross-examined.
9. On the basis of documents and pleadings of the concerned workman following points arise for my determination and my findings are recorded thereon for the reasons given below.

Sr. No.	Points	Findings
1	Whether enquiry is fair & proper ?	Yes
2.	Whether the findings of Enquiry Officer are perverse ?	No
3.	Whether the punishment imposed on the concerned workman of termination of services is proportionate ?	Yes
4.	Whether the concerned workman is entitled to any relief ?	No
5.	What Order ?	As per final order

### REASONS

#### Issue No.1 to 5.

10. So far contentions go, in his statement of claim and in his evidence, the concerned workman has stated that the charge sheet which was issued to him on the allegations of taking personal loan account is false and dubious. In his statement of claim he has stated that he was in need of money for incurring medical expenses and in view of that his evidence and the statement of claim refers to the enquiry proceedings which according to him was fabricated and unfair. It is therefore necessary to refer the documents pertaining to the enquiry which was held against the concerned workman.

11. At Sr. No.6 below Ex.8 we have document i.e. the order of the Enquiry Officer in respect of the enquiry conducted against Shri B.B. Waje, the concerned workman. It appears from the order that Shri B.B. Waje, the concerned workman was issued the charge sheet dated 28.12.2007 for following misconduct.

Clause 28.15:	Willful falsification, defacement ... of records of the Corporation.
Clause 28.13:	"...Fraud / dishonesty in connection with the Corporation's business or property".
Clause 28.4:	"...act subversive of discipline ...".
Clause 28.37:	Habitual breach of any Standing Order or any law applicable to the Establishment

12. It is clear from the order that Shri S.P. Ghan, Chief Manager Logistics & HSSE (I&C), HQ was appointed as Enquiry Officer and Shri R. Sunderesh, the then Manager was appointed as a Presenting Officer. It is important to note that Shri Waje was defended in this enquiry by Shri Rajiva Shetty, Superintendent, Sewree Installation as his Defense Counsel. The enquiry was conducted on 14.10.2008 and it was concluded on 18.4.2011. It appears that Shri Waje and his Defense Counsel fully participated in the enquiry proceedings.

13. It appears from the said order that the Enquiry Officer after considering oral & documentary evidence brought on record held that the charges vide clause No. 28.15, 28.13 and 28.4 stands conclusively proved whereas the charge in clause No.28.37 has not been proved. It appears from this order that the fair and proper enquiry was conducted.

14. There is no evidence of the concerned workman to show that he was not given opportunity to defend himself during enquiry proceedings. On the contrary it appears that oral & documentary evidence which was brought on record was taken into consideration and these documents came on record from both the sides. Then it also appears that copy of Enquiry Officer's report was sent to Shri Waje vide letter dated 15.2.2012 to make his representation and Shri Waje vide his letter dated 19.3.2012 made his representation on the Enquiry Officer's report.

15. So far as charges leveled against Shri Waje are concerned, it is in respect of willful falsification of the record of corporation, fraud dishonesty in connection with the corporation business. In this respect certified copy of the pay slips were brought on record before the Enquiry Officer to prove that the concerned workman Shri Waje submitted the tempered pay slips submitted to IDBI Finance Ltd. It appears from the order that during the enquiry, the documents were brought on record in respect of the application made by Shri Waje for obtaining home loan and home loan was sanctioned to the tune of Rs.10 lakhs by the IDBI bank on 19.6.2006. The salary slips were submitted by Shri Waje for obtaining the loan and as per the enquiry report salary slips were tempered by him.

16. Shri Waje in his statement of claim and evidence has stated that he has obtained the loan from bank for incurring the medical expenses and then produced certain copies of reports i.e. discharge summary, C.T. Scan report etc. to show that he was in need of money. But then in his evidence that he has not disproved the charge, to show that the findings of Enquiry Officer are perverse.

17. It appears from the report of the Enquiry Officer that the concerned workman has created huge financial liabilities by borrowing the money from the financial institutions and the bank and those financial institutions issued salary attachment orders in the name of Corporation for recovery of loan. Even his past record was being taken into consideration showing that he has been awarded punishment on three earlier occasions. The details in that respect are enumerated in the order itself.

18. On going through the order, it appears that Shri Waje was given ample opportunity to prove his conduct, behavior and devotion to his duty. The concerned workman dragged Corporation's name for his personal gains and benefits and therefore his services came to be terminated since Corporation has lost complete confidence and faith reposed on him.

19. There is no evidence on behalf of the concerned workman to show that the findings of the Enquiry Officer are perverse. The appeal presented by him was also turned down by the Appellate authority and as such it appears that findings of the Enquiry Officer are based on documents such as loan application signed by Shri Waje, D.Ds signed by him in the name of M/s. Shreeji Realtor & Builder in realization of housing loan amount and other communications received from M/s. IHFCL pertaining to the loan obtained by him.

20. Shri Waje was given show cause notice. He was given charge sheet. He was given opportunity to defend himself. He defended himself by Defense Counsel and then as per the conclusion of Enquiry Officer charges of willful falsification, fraud and act of subversive of discipline are proved.

21. Considering all these facts I find that the enquiry held against the concerned workman Shri Waje was fair and proper and as such the findings of the Enquiry Officer are not perverse.

22. Even then in his evidence Shri Waje has claimed that the enquiry was dubious and he obtained loan for medical expenses. He then claims amount of Rs.31,83,586/- + dues. But then there is no evidence to prove this claim. There is

also no evidence on behalf of the concerned workman to prove that he is entitled to cost towards mental & physical harassment etc. As such he has not proved that the enquiry was dubious and the findings of the Enquiry Officer are perverse. In respect of imposing punishment the order placed on record itself makes it clear that the charges leveled against the concerned workman which are held to be proved are serious acts of misconduct. Considering the charges leveled against him which are held to be proved and considering the gravity and seriousness of the misconduct committed by him punishment of dismissal of service was imposed upon him which is proportionate.

23. Even otherwise in the circumstances it can be held that when it is finding of fact that the charges are proved, then the court has no jurisdiction to interfere in the punishment imposed. In the context hand can be laid in the decision in case of U.P. State Transport Corporation V/s. Mohanlal Gupta 2000 DGLS (SC 678).

24. In view of my findings to the above points, I find that the concerned workman is not entitled to any relief. Hence I pass the following order.

### **ORDER**

Reference is rejected with no order as to costs.

Date: 09.08.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2312.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओरिएण्टल इश्योरेंस कम्पनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 33/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.09.2017 को प्राप्त हुआ था।

[सं. एल-17012/15/2016-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 25th September, 2017

**S.O. 2312.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2016) of the Central Government Industrial Tribunal/Labour Court-I, Chandigarh now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Oriental Insurance Company Ltd. and their workman, which was received by the Central Government on 06.09.2017.

[No. L-17012/15/2016-IR (M)]

RAJESH KUMAR, Under Secy.

### **ANNEXURE**

#### **BEFORE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH**

#### **CASE NO. ID No. 33 of 2016**

Smt. Rachna, W/o Sh. Dalip Kumar, R/o Ahata No.16,  
Street No.11, Ferozepur Cantt, Ferozepur

...(Petitioner)

#### **Versus**

1) The Manager, M/s. Oriental Insurance Company Ltd.,  
Surendra Building, S.C.O. No. 109-110-111, Sector-17-D,  
Chandigarh-160017

2) The Divisional Manager,  
M/s. Oriental Insurance Company Ltd. 11,  
The Mall Ferozepur (Punjab)

...(Respondents)

For the Workman : Nemo

For the Management : Nemo

**AWARD**

17/08/2017

Government of India Ministry of Labour vide notification No.L-17012/15/2016/IR(M) dated 02.09.2016; has referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Oriental Insurance Company Limited in terminating the services of Smt. Rachna wife of Shri Dalip Kumar from the Post of Sweeper without conducting of fair and legal disciplinary procedure is legal and justified? If not, what relief the workman is entitled to and from which dated?”

This reference dates back to September 2016 but the workman has continuously been absenting right from day one. The case has been adjourned for half a dozen times for appearance of the workman but it has not yielded any result because the workman appears to be least interested in pursuing the matter.

The reference relates to alleged illegal termination of the workman but the workman has not shown any interest in carrying the matter to its logical end. It is a case of unexplained long absence of the workman and her failure to substantiate her claim. It was for the workman to establish that her service was terminated illegally without a fair enquiry but then the workman has not been able to put forth their stand. So the case is dismissed for non appearance of workman. The reference is accordingly answered. Copy of the Award be forwarded to Central Govt. for further necessary action.

Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

A. K. KOUL, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2313.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत गोल्ड माइन्स लिमिटेड एवं अन्य के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 80/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.09.2017 को प्राप्त हुआ था।

[सं. एल-43012/22/1995-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 25th September, 2017

**S.O. 2313.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/1996) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bharat Gold Mines Ltd. and other and their workman, which was received by the Central Government on 11.09.2017.

[No. L-43012/22/1995-IR (M)]

RAJESH KUMAR, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR**

**Case No. R/80/96**

Shri Kewal Ramji Harkaude,  
R/o Nagardhan,  
Tehsil Ramtak,  
Distt. Nagpur

...Workman

**Versus**

General Manager (P),  
Manganese Ore(India) Ltd.,  
3, Mount Road Extension,  
Nagpur

Manager,  
Bharat Gold Mines Ltd.,  
Beldngri Mines,  
Tehsil Ramtek, Nagpur

...Management

### AWARD

Passed on this 31<sup>st</sup> day of January 2017

1. As per letter dated 18-3-96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-43012/22/95-IR(Misc.).The dispute under reference relates to:

“Whether the action of the management of Bharat Gold Mines Ltd. PO Oorgaum, KGF 563120 in terminating the services of Shri Kewal Ramji, a semi skilled time rated worker w.e.f. 16-4-95 as claimed by him is legal, proper and just? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. 2<sup>nd</sup> party workman submitted statement of claim at Page 2/1 to 2/3. Case of workman is that he was working with 2<sup>nd</sup> party MOIL, Manager BGML from 19-11-92 as labour. He was paid Rs.41 per day. Initially management issued employment card to him. He was given employment every two months with artificial gap of 4-5 days. Management had taken back original copy of appointment orders. Workman was not in extended benefits and privileges of permanent employees by PF, bonus, wages, rest medical facilities. Workers who were working with the management had approached ALC, Nagpur vide representation dated 17-10-94. ALC Nagpur initiated enquiry in the matter. Workers first time opened their mouth regarding their grievances instead of allowing benefits and privileges. Management terminated services of the workers on 15-4-95 without assigning any reason that workman had put 240 days attendance every year of service. Their services were terminated without notice, retrenchment compensation as not paid to him. Termination of his service is illegal. On such ground, workman prays for his reinstatement with backwages.

3. 2<sup>nd</sup> party MOIL filed Written Statement at Page 7/1 to 7/6 opposing claim of workman. 2<sup>nd</sup> party MOIL claims that it is undertaking of Government of India having office at Mount Road, Nagpur. MOIL has several manganese mine situated at MP and Maharashtra. That BGML is also undertaking of Government of India having office at Karnataka. Management of BGML diversifies its activities in mines construction and contract work. That contract of MOIL and BGML was entered in September 1992 for construction of underground shaft. It is reiterated that the BGML had engaged labours for the work under contract. There is no employer employee relationship between MJOIL and workman. In its Written Statement, MOIL has admitted Kewalramji and others were engaged as temporary employee during 19-11-92 for time bound contract work. It is also admitted that the claimants was issued employment card. The claimant was appointed locally by local officer on minimum wages Rs.34.46 per day for 2 months by Local Officer. The claimant accepted the employment of temporary nature for specific contract work, they were engaged. Work was completed, his services were deemed to be terminated after expiry of contract work. Disengagement of claimant is covered under Section 2(o)(bb) of ID Act, it doesnot amount to retrenchment. That the terms of reference are not clear about right of liability of MOIL and claimant workman. There is no specific prohibition for awarding contract work. For recruitment of employees in MOIL, there is recruitment procedure of the company. The vacancies are notified to local Employment Exchange. Claimant was not engaged following recruitment procedure. Therefore claimant is not entitled for regularization on the ground of continuous working. Claim of workman is not justified. It deserves to be rejected.

4. Ist party No.2 BGML submitted separate Written Statement at Page 8/1 to 8/6. BGML contends that it is Government of India enterprise. It was awarded contract by MOIL in February 1992 for construction of underground shaft. The contract work was completed in April 1995. The activities of BGML had come to end after the contract was completed, the employees engaged by contractor of BGML provisions of CL Act donot apply. That BGML follows all legal provisions of the act. As per management of MOIL, BGML complied provisions of labour laws. There was no complaint against the contractor BGML. That management of MOIL is not liable to provide employment to workman engaged by BGML. That claimant workman was employed purely on adhoc basis to execute contract work by management of BGML. The contract work is temporary which continues as long as contract continues. The claimant was paid wages at rate of semiskilled workers. His appointment was from 19-11-92 for specific period. The renewal of contract depended on contract awarded to the company. The claim accepted terms and conditions of the appointment. The claimant workman was not appointed on permanent post following recruitment rules. The appointment clearly indicates that on completion of contract, services stands automatically cancelled. No notice will be given. BGML has referred to ratio held in various cases reiterating workman is not entitled to regularization. It is further contented that the claimants are entitled to benefits of PF, EPF, exgratia, medical facilities etc. the claimant was paid minimum wages as per rates fixed by Government including PF, exgratia amount. It is reiterated that claimant have not completed 240 days continuous service. Violation of provision of ID Act has been denied.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Bharat Gold Mines Ltd. PO Oorgaum, KGF 563120 in terminating the services of Shri Kewal Ramji, a semi skilled time rated worker w.e.f. 16-4-95 as claimed by him is legal, proper and just?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

### REASONS

6. Point No.1 The term of reference pertains to legality of termination of service of claimant Kewal Ramaji. Workman filed affidavit of his evidence. He has stated that he was engaged by management from 19-11-82 as labour, he was paid Rs.41 per day, he was continuously working with the management. Artificial break was given to him. He was given employment by management but he was denied benefit of PF, bonus, medical facilities etc. His services were terminated on 15-4-95 in violation of Section 25-F of ID Act. In his cross examination, claimant workman admits he was engaged by BGML as admitted appointment letter Exhibit M-1. He denies that his appointment was extended time to time. Appointment order in original is not with him. He claims ignorance what work was given in contract to BGML. He was paid wages at end of month. As per the working days, he did not recollect the rate of wages he was paid. BGML company continued him in employment till the work was continued. He denies that BGML company is closed. He denied that at BGML company, there is work at Balaghat, Guna. He claims ignorance whether BGML company was closed 5 years back and not carrying any work.

7. Management's witness Nitin Pagnis Chief Personal Manager of MOIL filed affidavit of his evidence. He has stated that agreement was executed between MOIL and BGML contractor on 31-5-91. BGML completed work allotted to it. Work completion certificate is produced. That BGML completed contract work in April 1995. BGML complied with the provisions of labour laws during execution of work. That Board of BGML had approached board for industrial financial reconstruction (BIFR). BGML was wound up under section 20(1). The opinion of Board was forwarded to concerned High Court. The Appellate Authority as per order dated 15-11-2000 held rehabilitation proposal submitted by BGML was not workable. In his cross examination, management witness for MOIL says he is working as Personal Manager at Nagpur office from 2006. He claims ignorance about notice issued in 1992 for filling of tenders in 1992. BGML is a public undertaking, work was given to BGML. Work carried by BGML was supervised by MOIL. After completion of work of BGML, certificate was issued about completion of work. Management's witness was unable to tell at the time of issuing NOC, whether information about payments of labours was considered.

8. Management's witness Sjhri N.Ramaswami filed affidavit of his evidence that BGML is Government of India enterprises. MOIL had awarded contract of BHML in February 1992 of underground shaft in underground mines of MOIL. From his evidence, documents Exhibit M-2 to 8 are admitted in evidence. In his cross-examination, said witness of management says documents Exhibit M-2 to M-8 were not signed in his presence. The activities of BGML are carried through out India. BGML carries works on contract. Contract between BGML and MOIL was during the period 1991 to 1994. Work of BGML was carried at Balaghat in 2001. Exhibit M-1 was issued for work in Beldongri unit of MOIL. The BGML had provided helmet and other safety instruments to its workers. He claims ignorance about the explosives used in BGML mines. BGML takes contract of mining work in MOIL, WCL, Hindustan Copper, SECL etc.

9. The documents are produced Exhibit M-2 agreement dated 31-5-91 w.r.t. work of sinking of vertical shaft having size 4.6 mtrs x 1.8 mtrs depth 70 mtrs at Beldongri mines. Para 5 pertains to expertise fees based on the actual monthly progress. Agreement also pertains to workshop facilities power supply, salary wages to concerned employees, liability for compensation on account of accident was on contractor BGML. Personal requirements bills in advance, commencement and completion of work. Work was to be completed by end of September 1993. Exhibit M-3 completion certificate shows the contract work to BGML was completed on 15-4-95. Exhibit M-4 is notice of completion dated 14-5-95. Exhibit M-5 is certificate in Form V by Principal Employer. BGML had undertaken to comply provisions of Contract Labour Act. Exhibit M-6 is copy of letter dated 12-6-00 BGML was wound up under Section 20(1) of BIFR Act. Exhibit M-7 is order passed by Appellate Authority. Any scheme for rehabilitation of BGML was not found workable. Exhibit M-8 is closure report of BGML mines. M-9 is appointment letter given to the claimant for the period 9-11-92 to 18-1-93. As per document Exhibit M-3, work of BGML was completed on 15-4-95, no evidence is adduced that why workman was not engaged till completion of work. Therefore evidence of workman

deserves to be accepted that workman was continuously working till termination of his service on 16-4-95. When work was closed and services of Ist party workman were terminated, Ist party workman was not served with notice, no retrenchment compensation was paid by BGML. Therefore the termination of workman is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

10. Point No.2- In view of my finding in Point No.1 termination of services by BGML is illegal for violation of Section 25-F of ID Act, question remains for consideration is whether claimant workman is entitled for reinstatement. As per order annexed with Exhibit M-6, BGML is declared sick unit. Under section 20(1) of Rehabilitation, the scheme for BGML was not workable. The BGML is closed as per Exhibit M-8. The relief of reinstatement is not possible. Considering workman was engaged by contractor BGML, reasonable compensation Rs.75,000/- deserves to be awarded against BGML. However BGML is declared sick unit, it has been closed. If the amount of compensation could not be recovered from BGML, as per Section 21(4) of CL Act, claimant is entitled to recover compensation amount from management of MOIL. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of the management of Bharat Gold Mines Ltd. in terminating the services of Shri Kewal Ramji, a semi skilled time rated worker w.e.f. 16-4-95 is not legal.
- (2) Management of BGML is directed to pay compensation Rs.75,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization. In case compensation amount could not be recovered from BGML, claimant is at liberty to recover compensation amount from management of MOIL.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2314.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स शिवा स्टोन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 37/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.09.2017 को प्राप्त हुआ था।

[सं. एल-29011/59/2003-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 25th September, 2017

**S.O. 2314.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2005) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Shiva Stones and their workman, which was received by the Central Government on 11.09.2017.

[No. L-29011/59/2003-IR (M)]

RAJESH KUMAR, Under Secy.

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर  
सी.जी.आई.टी. प्रकरण सं. 37/ 2005

भरत पाण्डेय, पीठासीन अधिकारी  
रेफरेन्स नं. L- 29011/59/2003 –IR(M) दिनांक 22/02/2005

सेक्रेटरी,  
हाडौती खान् एवं पत्थर उद्योग मजदूर यूनियन,  
सरस्वती कॉलोनी, खेड़ली फाटक,  
कोटा – (राजस्थान)

**बनाम**

श्री राधारमण मालपानी, माईन्स ओनर  
मैसर्स शिवा स्टोन्स, बाजार नं.—4  
रामगंजमण्डी,  
जिला — कोटा 326519 (राजस्थान)।

प्रार्थी की तरफ से : श्री अरुण शर्मा, (withdrawn on 29.11.2016)  
अप्रार्थी की तरफ से : श्री प्रवीण पुरोहित, एडवोकेट

: पंचाट :

दिनांक : 21.07.2017

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा 1 खण्ड (घ) के अन्तर्गत दिनांक 22.02.2005 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :—

**“Whether the claim of the union that Shri Ram Narayan Lodha was designated as Foreman but had actually worked as clerk in the mines of the M/s Shiva Stones, Ramganjmandi, Distt. Kota (Raj.) is correct? If yes, whether the action of the management in terminating the service of the claimant w.e.f. 12.12.2002 is legal and justified? If not, to what relief the claimant is entitled to?”**

2. याचिका में दिये गये तथ्य के अनुसार संक्षिप्ततः याची श्री रामनारायण लोधा का कथन है कि विपक्षी ने उसे दिनांक 12.01.1995 को अपनी सेवा में नियोजित किया था। आगे प्रार्थी का कथन है कि नियोजक के यहा प्रार्थी का कार्य सन्तोषप्रद होने के कारण नियोजक ने प्रार्थी को एक वर्ष की सेवा अवधि पूर्ण कर लेने पर वर्ष 1996 में मेट बना दिया, इसके बाद वर्ष 2000 में नियोजक ने प्रार्थी को फोरमैन के पद पर पदोन्नत कर दिया परन्तु प्रार्थी का कार्य मेट के पद पर एवं फोरमैन के पद पर रहते हुये भी क्लर्क का ही रहा है, इस प्रकार प्रार्थी औद्योगिक विवाद अधिनियम 1947 की धारा —2(एस) के अन्तर्गत “वर्कमैन” की परिभाषा में आता है। याचिका के शेष कथन निम्नवत् है:—

“यह है कि नियोजक ने प्रार्थी को अचानक, बिना कोई कारण बताये, बिना किसी पूर्व सूचना के दिनांक 12.12.2002 से नौकरी से हटा दिया है, जो अवैध है।

यह है कि प्रार्थी ने नियोजक के यहां पर दिनांक 12.01.1995 से दिनांक 11.12.2002 तक निरन्तर कार्य किया है तथा इस अवधि में 240 दिन से काफी अधिक समय तक कार्य कर लिया है।

यह है कि प्रार्थी का विवाद औद्योगिक विवाद अधिनियम 1947 की धारा —2(ओओ) के अन्तर्गत “छंटनी” की परिभाषा में आता है।

यह है कि नियोजक ने प्रार्थी को सेवा से हटाये जाने से पूर्व औद्योगिक विवाद अधिनियम 1947 की धारा —25 —एफ के प्रावधानों के अनुसार एक माह का नोटिस नहीं दिया है और न इसके बदले में एक माह के अग्रिम वेतन का भुगतान ही किया है, इसके अतिरिक्त नियोजक ने प्रार्थी को नौकरी से निकाले जाने से पूर्व छंटनी का मुआवजा भी नहीं दिया है और न आफर ही किया है। इस प्रकार से अवैध प्रकार से नौकरी से हटा दिया है।

यह है कि नियोजक ने औद्योगिक विवाद रूल्स (केन्द्रीय) 1957 के रूल —77 के प्रावधानों के अनुसार प्रार्थी को नौकरी हटाने के पूर्व वरिष्ठता सूची का प्रकाशन भी नहीं किया है। प्रार्थी को नौकरी से हटाये जाने के समय प्रार्थी से कनिष्ठ अन्य कई श्रमिक नियोजक के नियोजन में मौजूद थे। इस प्रकार नियोजक ने प्रार्थी को औद्योगिक विवाद अधिनियम 1947 की धारा —25 —जी के प्रावधानों की भी अवहेलना की है।

यह कि नियोजक ने प्रार्थी को नौकरी से हटाये जाने के बाद प्रार्थी के स्थान पर नया श्रमिक सेवा में नियोजित कर लिया है एवं नया श्रमिक नियोजित किये जाने से पूर्व नियोजक ने प्रार्थी को नियोजन हेतु कोई अवसर प्रदान नहीं किया है, जो औद्योगिक विवाद अधिनियम 1947 की धारा —25 —एच के साथ

पठित औद्योगिक विवाद रूलस (केन्द्रीय) 1957 के रूल -78 की अवहेलन है तथा नियोजक का यह कृत्य अन्फेयर लेबर प्रेक्टिस की परिभाषा में भी आता है।

यह कि नियोजक ने प्रार्थी को नियोजित करने की दिनांक 12.01.1995 से क्लर्क का ही कार्य लिया है, जिसमें प्रार्थी श्रमिकों की उपस्थिति दर्ज करना, श्रमिकों की मासिक वेतन शीट तैयार करना, क्वार्टरली रिटर्न तैयार करके केन्द्रीय श्रम विभाग को भेजना, इसके अतिरिक्त नियोजक के यहां “ए से जेड” तक जो रजिस्टर रखे जाते हैं उन सब रजिस्टर्स को प्रार्थी ही तैयार करता था तथा इन रजिस्टर्स कीपर के स्थान पर प्रार्थी के हस्ताक्षर प्रत्येक रजिस्टर में होते थे। प्रार्थी का फोरमैन का पद तो नाम मात्र का था। इस प्रकार प्रार्थी वर्कमैन की परिभाषा में आता है।” अन्त में प्रार्थी ने याचना की है कि सेवा समाप्ति का आदेश निरस्त कर उसे विगत वेतन लाभ एवं सेवा की निरन्तरता सहित सेवा में पुनर्स्थापित किया जाय।

3. याचिका के विरुद्ध प्रस्तरवार जबाब प्रस्तुत कर कहा गया है कि याचिका के प्रस्तर 1 लगायत 9 का कथन जिस प्रकार याचिका में उल्लेखित है वैसा स्वीकार नहीं है। आगे प्रस्तरवार जबाब में कहा गया है कि श्री रामनारायण लोधा अप्रार्थी संस्था मैसर्स शिवा स्टोन में माईन्स फोरमैन के पद पर कार्यरत थे एवं माईन्स फोरमैन औद्योगिक विवाद अधिनियम 1947 की धारा -2(एस) के अन्तर्गत श्रमिक की परिभाषा में नहीं है, जो निम्न तथ्यों से स्पष्ट है:-

1. श्री रामनारायण लोधा का कार्य माईन्स पर मजदूरों से काम लेना, दूसरों को काम सुपुर्द करना एवं स्वयं प्रबन्धक की तरफ से हर कार्य से सम्बन्धित निर्णय लेने में स्वतन्त्र थे।
2. श्री रामनारायण लोधा का कार्य अपने अधीनस्थ श्रमिकों की छुट्टियाँ स्वीकार करना, उनकी ड्यूटी का बँटवारा करना, माईन्स पर श्रमिकों की कार्यप्रणाली से सम्बन्धित अनुशासनात्मक कार्यवाही करने एवं अनेक ऐसे कार्य करने, जो सुपरवाइजरी की कैटेगरी के अन्तर्गत आते हैं, उनकी शक्तियों में निहित थे।
3. श्री रामनारायण लोधा का कार्य प्रबन्धकों के एक प्रतिनिधि की हैसियत से लिये गये निर्णयों का एक्जीक्यूशन कराना था जिसके अन्तर्गत माईन्स पर उत्पादित माल का स्वयं के निर्देश में एवं अपने सुपरविजन में कराना होता था।
4. उपरोक्त कर्तव्यों व शक्तियों के आधार पर उनका वर्गीकरण एक सुपरवाइजरी की हैसियत का रहा जिसके कारण वे श्रमिक की श्रेणी में नहीं आते हैं।
5. श्री रामनारायण लोधा की सेवाएँ एवं कार्यप्रणाली “The Metalliferous Mines Regulations” 1961 से Govern होती है जिसकी धारा 46 में फोरमैन के कार्य दायित्व का वर्णन है जिसके अवलोकन से यह स्पष्ट होता है कि फोरमैन के कार्य दायित्व सुपरवाइजरी श्रेणी के अन्तर्गत आते हैं। उक्त प्रावधानों (धारा 46) की छायाप्रति प्रदर्श-1 संलग्न है। प्रार्थी का मासिक वेतन भी 3,823/- था, अतः प्रार्थी पर औद्योगिक विवाद अधिनियम, 1947 के प्रावधान लागू नहीं होते। इस कारण यह प्रकरण औद्योगिक विवाद अधिनियम 1947 के अन्तर्गत चलने योग्य नहीं है, अतः मामला खारिज फरमाया जावे।

4. उक्त वर्णित प्रारम्भिक आपत्तियों से अप्राभावित रहते हुये अप्रार्थी संस्था स्टेटमेन्ट ऑफ क्लेम का पैरावाइज जवाब इस प्रकार प्रस्तुत करती है।

1. स्टेटमेन्ट ऑफ क्लेम के पैरा-1 में वर्णित तथ्य जिस प्रकार उल्लिखित किये गये हैं, स्वीकार नहीं है। प्रार्थी श्री रामनारायण लोधा अप्रार्थी के यहां वर्ष 1995 से क्लर्क की नौकरी पर लगा था। बाद में उसने माईनिंग मेट तथा खान फोरमैन के पद पर लगा दिया। पैरा-1 का शेष भाग अप्रार्थी संख्या के मालिक का पता है, जिससे इन्कार नहीं है।
2. स्टेटमेन्ट ऑफ क्लेम के पैरा-2 के तथ्य जिस प्रकार उल्लिखित हैं, स्वीकार नहीं है। प्रार्थी श्री रामनारायण लोधा वर्ष 1995 से क्लर्क की नौकरी पर लगा था। बाद में उसने माईनिंग मेट व खान फोरमैन की परीक्षाएँ पास कर ली। इस लिये उसे माईनिंग मेट व खान फोरमैन के पद पर लगा दिया। दिनांक 12 दिसम्बर 2002 के बाद उसने स्वतः ही कार्य पर आना बंद कर दिया। नौकरी छोड़ने से पहले वह खान फोरमैन की हैसियत से कार्य करता था। चूँकि खान फोरमैन का

कार्य प्रबन्धकीय वर्ग में आता है अतः औद्योगिक विवाद अधिनियम, 1947 के प्रावधान लागू नहीं होते। माननीय उच्चतम न्यायालय ने 2000 (एल.एल.जे.) 639 में बिरला कोरपोरेशन लि. बनाम राजेश्वर मेहता के मामले में यह माना है कि जब मुख्य ड्यूटी सुपरवाइजरी एवं मैनेजरीयल हो तो उसे वर्कमैन नहीं माना जा सकता। इस आधार पर भी प्रार्थी कर्मकार नहीं है।

3. स्टेटमेन्ट ऑफ क्लेम के पैरा-3 में वर्णित तथ्य कि प्रार्थी को गलत तरीके से हटाया गया है, गलत होने के कारण अस्वीकार है।
4. स्टेटमेन्ट ऑफ क्लेम के पैरा-4 में वर्णित कथन अस्वीकार है।
5. स्टेटमेन्ट ऑफ क्लेम के पैरा-5 में वर्णित तथ्य जिस प्रकार वर्णित है, अस्वीकार है। चूँकि प्रार्थी श्री रामनारायण लोधा माईन्स फोरमैन के पद पर कार्यरत था जो कि सुपरवाइजरी एवं मैनेजरीयल वर्ग में आता है जिसके आधार पर प्रार्थी वर्कमैन नहीं है, अतः जब वर्कमैन ही नहीं है तो औद्योगिक विवाद अधिनियम, 1947 के प्रावधान लागू नहीं होते। अतः अस्वीकार है।
6. स्टेटमेन्ट ऑफ क्लेम के पैरा-6 में वर्णित कथन जिस प्रकार उल्लिखित है, अस्वीकार है। चूँकि प्रार्थी श्रमिक (कर्मकार) की परिभाषा में नहीं आता है, उस पर औद्योगिक विवाद अधिनियम, 1947 का प्रावधान लागू नहीं होता है, अतः वह उसके किसी भी प्रावधान से लाभान्वित नहीं हो सकता है। इस प्रकरण में अप्रार्थी संस्था प्रार्थी के सन्दर्भ में औद्योगिक विवाद अधिनियम, 1947 के किसी भी धारा की अनुपालना करने के लिये बाध्य नहीं है।
7. स्टेटमेन्ट ऑफ क्लेम के पैरा-7 में वर्णित कथन जिस प्रकार उल्लिखित है, अस्वीकार है। प्रार्थी, अप्रार्थी संस्था में माईन्स फोरमैन के पद पर कार्यरत होने के कारण औद्योगिक विवाद अधिनियम 1947 के अन्तर्गत धारा -2(एस) की "कर्मकार" की परिभाषा में नहीं आता है क्योंकि उसका कार्य सुपरवाइजरी एवं प्रबन्धकीय प्रकृति का है। इसलिये औद्योगिक विवाद अधिनियम 1947 प्रभावी नहीं होने के कारण उसकी किसी भी धारा या प्रावधान का उल्लंघन का प्रश्न ही नहीं उठता है।
8. स्टेटमेन्ट ऑफ क्लेम के पैरा-8 में वर्णित कथन जिस प्रकार निरूपित है, स्वीकार नहीं है। चूँकि प्रार्थी श्री रामनारायण लोधा औद्योगिक विवाद अधिनियम की धारा -2(एस) के अन्तर्गत कर्मकार ही नहीं है तो इस अधिनियम एवं रूल्स के लागू न होने के कारण उसकी पालना न करने का प्रश्न ही नहीं बनता है।
9. स्टेटमेन्ट ऑफ क्लेम के पैरा-9 में वर्णित कथन जिस प्रकार उल्लिखित है, अस्वीकार है। प्रार्थी, अप्रार्थी संस्था में दिनांक 1 अप्रैल 1995 से ही माईन्स फोरमैन के पद पर कार्यरत था। प्रार्थी ने एक प्रार्थना पत्र ग्रेच्युटी के भुगतान हेतु पेश किया जिसमें स्वयं को दिनांक 12 जनवरी 1995 से फोरमैन के पद पर कार्यरत रहना बताया है। यदि प्रार्थी दिनांक 12 जनवरी 1995 से फोरमैन के पद पर कार्यरत न होकर लिपिक के पद पर कार्यरत होता तो अपने प्रार्थना पत्र में उसी प्रकार उद्धृत करता परन्तु उसके द्वारा ऐसा नहीं किया जाना स्वतः प्रमाणित करता है कि वह लिपिक के पद पर नहीं बल्कि फोरमैन के पद पर कार्यरत था। यदि वह लिपिक ही था तो फोरमैन का वेतन किस आधार पर उठा रहा था। प्रबन्धकीय आवश्यकतानुसार प्रार्थी ने सुपरवाइजरी कार्य करने के साथ कभी कभार क्लर्क का काम भी किया हो तो इसमें उसका पद या वेतनमान तो परिवर्तित नहीं हो जाते। प्रार्थी का यह कथन कि फोरमैन का पद तो नाम मात्र का था, काम क्लर्क का करता था, पूर्णतः गलत है। जब वह वेतन फोरमैन का ले रहा था, अपना पद फोरमैन बताता था तो क्लर्क किस आधार पर रहा। प्रार्थी का यह कथन उसकी पश्चात्वर्ती सोच का ही हिस्सा है। प्रार्थी फोरमैन होने के कारण सुपरवाइजरी/ प्रबन्धकीय श्रेणी का अधिकारी/कर्मचारी था, न कि औद्योगिक विवाद अधिनियम की धारा -2(एस) के अन्तर्गत "श्रमिक" था। प्रार्थी श्री रामनारायण लोधा फोरमैन एवं खान प्रबन्धक की हैसियत से कार्य करता था तथा खान प्रबन्धक की अनुपस्थिति में खान प्रबन्धक का काम भी देखता था। इसकी पुष्टि उसके द्वारा हस्ताक्षरित विभिन्न रिकॉर्ड, रजिस्टर, खान फोरमैन की डायरी तथा स्वयं की छुट्टी के प्रार्थना पत्र, जिसकी छायाप्रति संलग्न है, के अवलोकन से जाहिर है जिस पर उसने स्वयं अपना पद खान फोरमैन लिखा है। उसके खान फोरमैन के पद की पुष्टि उसके स्वयं द्वारा भरी गई है। दिनांक 19 दिसम्बर 2001 से 29 दिसम्बर 2001 की अवधि में खान में फोरमैन की डायरी, जो कि खान अधिनियम, 1961 की धारा 46 के तहत भरती जाती है, से भी हो रही है। अगर श्री रामनारायण

लोधा खान फोरमैन की हैसियत से कार्य नहीं कर रहे थे तो उसके द्वारा खान फोरमैन डायरी भरा जाना उपरोक्त अधिनियम, 1961 की धारा 46 का उल्लंघन है और दण्डनीय अपराध है।

5. जवाबुलजवाब में प्रार्थी ने विपक्ष द्वारा क्लेम के विरुद्ध प्रस्तुत जवाब का खण्डन किया है एवं अस्वीकार किया है। विशिष्ट कथन में यह कहा है कि विपक्ष व्यवस्था सम्बन्धी नियमों के चलते श्रमिक को फोरमैन बता रहा है लेकिन विपक्ष के कहने या बताने मात्र से प्रार्थी फोरमैन नहीं हो गया है। श्रमिक की स्थिति नियोक्ता के समक्ष कमजोर होती है तथा नियोक्ता के कहने के अनुसार श्रमिक को कार्य करने होते हैं। ऐसी स्थिति में न्यायालय को यह देखना है कि केवल 10 दिन के लिए यदि नियोक्ता ने श्रमिक से फोरमैन का कार्य करवा भी लिया है तो क्या उससे श्रमिक का मूल स्टेटस बदल जायेगा।

6. याचिका के समर्थन में प्रार्थी ने अपनी शपथ-पत्र साक्ष्य में प्रस्तुत की है जिस पर विपक्षी ने याची की प्रतिपरीक्षा की है। विपक्ष की तरफ से श्री पुरुषोत्तम दास मालपानी की शपथ-पत्र पर याची पक्ष ने प्रतिपरीक्षा की है। उभयपक्ष द्वारा अपने समर्थन में अभिलेखीय साक्ष्य भी प्रस्तुत किये गये हैं।

7. दिनांक 29.11.16 को इस मामले में पत्रावली याची पक्ष की आवेदन दिनांकित 17.7.12 के निस्तारण में नियत थी। दिनांक 17.7.12 की आवेदन में प्रार्थी ने प्रार्थना की है कि आवेदन में वर्णित अभिलेख उसे पत्रावली पर प्रस्तुत करने की अनुमति प्रदान की जाए। दिनांक 29.11.16 के पूर्व प्रार्थी पक्ष दिनांक 19.12.14 से निरन्तर अनुपस्थित चल रहा था जिससे आगे की कार्यवाही सम्भव नहीं हो पा रही थी। दिनांक 29.11.16 को याची तथा विपक्ष के विद्वान प्रतिनिधि उपस्थित आये परन्तु याची के विद्वान प्रतिनिधि ने दिनांक 29.11.16 को निस्तारण हेतु नियत आवेदन की सुनवाई में हिस्सा लेने के बजाय यह अभिकथन प्रस्तुत किया कि वे दिनांक 29.11.16 से इस मामले में प्रार्थी का प्रतिनिधित्व नहीं करेंगे। इसके बाद अगली तिथि दिनांक 20.12.16 नियत की गयी और प्रार्थी को नोटिस निर्गत करने का आदेश पारित किया गया ताकि वह उपस्थित आवे और अपना प्रतिनिधि नियुक्त करें जिससे मुकदमें की कार्यवाही आगे बढ़ सके क्योंकि प्रार्थी की व्यक्तिगत उपस्थिति पत्रावली पर वर्ष 2014 से उपलब्ध नहीं थी।

8. प्रार्थी को चार बार नोटिसें भेजी गयी जो अदम तामिल वापस आ गयी। पाँचवीं बार प्रार्थी को नोटिस दिनांक 7.6.17 के आदेश के अनुपालन में भेजी गयी और प्रार्थी की उपस्थिति के लिए 27.6.17 तिथि नियत की गयी। भेजी गयी नोटिस निम्नवत् है :—

क्रमांक: सी.जी.आई.टी.जयपुर/2017.18/दिनांक : 07.06.2017

सेवा में,

श्री रामनारायण लोधा पुत्र श्री लक्ष्मीनारायण

द्वारा:— सेक्रेट्री, हाडौती खान एवं पत्थर उद्योग मजदूर यूनियन

सारस्वती कालोनी खेड़ली फाटक कोटा (राज.) 324002.

विषय:— आपकी इस न्यायाधिकरण में विचाराधीन CGIT Case No. 37/2005 रामनारायण लोधा द्वारा:— सेक्रेट्री, हाडौती खान एवं पत्थर उद्योग मजदूर यूनियन सारस्वती कालोनी खेड़ली फाटक कोटा (राज.) 324002 वनाम मेसर्स शिवा स्टोन, रामगंज मण्डी कोटा (राज.) में अगली तिथि दिनांक 27.06.2017 को आपकी स्वयं या प्रतिनिधि के माध्यम से उपस्थिति के सम्बन्ध में।

महोदय,

आप सूचित हो कि दिनांक 29.11.2016 को सुनवाई के दौरान आप के विद्वान प्रतिनिधि श्री अरुण शर्मा एड. ने न्यायाधिकरण को सूचित किया है कि वे अब आपका प्रतिनिधित्व उक्त प्रकरण में नहीं करेंगे क्योंकि आपकी तरफ से प्रतिनिधित्व करने हेतु उन्हें कोई निर्देश नहीं है। पत्रावली की आदेश तालिका के अवलोकन से यह जाहिर है कि 29.11.2016 के पूर्व आप की तरफ से 19.12.14/ 01.01.15 से न आप न आपके विद्वान प्रतिनिधि इस मामले में उपस्थित आये हैं जिससे आगे कोई कार्यवाही सम्भव नहीं हो सकी है।

इस नोटिस के माध्यम से आप को सूचित किया जाता है कि आप अगली नियत तिथि दिनांक 27.06.2017 को व्यक्तिगत रूप से अथवा किसी नियुक्त प्रतिनिधि के जरिये इस न्यायाधिकरण में मुकदमें की कार्यवाही में भाग लेने के लिये उपस्थित हो, ऐसा न करने पर माना जायेगा कि आप को

मुकदमे की आगे की कार्यवाही में रुचि नहीं है एवं मामले को आप की अनुपस्थिति में आगे की कार्यवाही करते हुए निस्तारित किया जायेगा।

हस्ताक्षर अपठनीय  
पीठासीन अधिकारी

9. दिनांक 10.6.17 को डाक विभाग के कर्मचारी ने अपने हस्ताक्षर सहित लिफाफे पर यह लिखकर नोटिस वापस भेज दिया कि प्राप्तकर्ता की मृत्यु हो चुकी है अतः वापस किया जाता है। सम्बन्धित लिफाफा पत्रावली पर उपलब्ध है।

10. दिनांक 27.6.17 को याची पक्ष की तरफ से कोई उपस्थित नहीं आया। विपक्ष के विद्वान प्रतिनिधि उपस्थित आये। याची की मृत्यु के कारण याची के विरुद्ध वरासत की कार्यवाही अपेक्षित थी क्योंकि वरासत की कार्यवाही के बिना आगे पत्रावली में आगामी कार्यवाही विधिक रूप से सम्भव नहीं थी। उक्त स्थिति में अगली तिथि 10.7.17 नियत की गयी और मृतक याची के विरुद्ध वरासत की कार्यवाही करने का आदेश इस निर्देश के साथ पारित किया गया कि याची (मृतक) के विरुद्ध वरासत की कार्यवाही याची पक्ष करे और वरासत की कार्यवाही न करने पर पत्रावली में आगे की कार्यवाही बन्द की जायेगी।

11. दिनांक 10.7.17 को भी याची पक्ष की तरफ से कोई उपस्थित नहीं आया। विपक्ष के विद्वान प्रतिनिधि उपस्थित आये जिन्होंने मामले को कई महीनों से बिना किसी कार्यवाही के चलते रहने पर आपत्ति की और मामले को उपशमित करने का अनुरोध किया। उक्त स्थिति में आगे की कार्यवाही समाप्त की गयी तथा पत्रावली विपक्ष के विद्वान प्रतिनिधि की बहस सुनने के बाद एवार्ड हेतु आरक्षित की गयी।

12. मैंने विपक्ष के विद्वान प्रतिनिधि की बहस सुनी तथा पत्रावली का अवलोकन किया।

13. विपक्ष के विद्वान प्रतिनिधि ने बहस की है कि प्रार्थी की वरासत के बिना आगे की कार्यवाही सम्भव नहीं है और प्रार्थी की तरफ से मुकदमे को आगे चलाने के लिए कोई आगे नहीं आ रहा है अतः इस मामले में आगे की कार्यवाही समाप्त करना न्यायसंगत होगा। यह बहस भी कि गयी है बाद में याची पक्ष की तरफ से कोई अगर मामले को आगे चलाना चाहता है तो वह अधिकार उसे उपलब्ध है तथा न्यायाधिकरण उसे आज्ञा प्रदान कर सकती है।

14. आदेश तालिका के अवलोकन से यह स्पष्ट जाहिर है कि दिनांक 19.12.14 से 29.11.16 के बीच याची व्यक्तिगत रूप से कभी उपस्थित नहीं रहा है तथा दोनों तिथियों के बीच याची के विद्वान प्रतिनिधि केवल 29.11.16 को मात्र इस बात की सूचना देने उपस्थित आये कि वह इस मामले में अब याची का प्रतिनिधित्व नहीं करेंगे। उक्त समस्त स्थिति से याची पक्ष की मामले के निस्तारण के प्रति उदासीनता जाहिर होती है। याची की मृत्यु कब हुई है यह भी निर्विवाद रूप से स्पष्ट नहीं है। उक्त सम्बन्धित तथ्य एवं परिस्थितियों में मैं इस निष्कर्ष पर हूँ कि प्रार्थी की मृत्यु के कारण मामले को उपशमित किया जाना आवश्यक एवं विधि संगत है। इस मामले को प्रार्थी की मृत्यु के कारण उपशमित किया जाता है। पंचाट तदनुसार पारित किया जाता है।

15. याची किसी प्रकार का अनुतोष पाने का हकदार नहीं है। याची की याचिका स्वीकार होने योग्य नहीं है एवं तदनुसार खारिज की जाती है। पंचाट तदनुसार पारित किया जाता है।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2315.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स दिल्ली इंटरनेशनल एयरपोर्ट (प्रा.) लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 102/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2017 को प्राप्त हुआ था।

[सं. एल-11012/6/2015-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 25th September, 2017

**S.O. 2315.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 102/2015) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Delhi International Airport (P) Ltd. and other and their workman, which was received by the Central Government on 19.09.2017.

[No. L-11012/6/2015-IR (M)]

RAJESH KUMAR, Under Secy.

**ANNEXURE**

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 2, KARKARDOOMA COURT COMPLEX, DELHI**

**ID. NO. 102/2015**

Shri Suresh Kumar, S/o Shri Sumera,  
R/o C/S/91/16 K2 Defence Enclave,  
Mahipalpur, New Delhi-110037

...Workman

**Versus**

1. The CMD,  
Delhi International Airport (P) Ltd.  
IGI Airport,  
New Delhi
2. M/s. Delite Systems Engineering (I) Pvt. Ltd.  
A-4/271, Galie No.2, above Bagga Link,  
Mahipalpur Extension, NH-8,  
New Delhi-110 037

...Managements

**AWARD**

A reference was received vide letter No.L-11012/6/2015-IR(M) dated 30.06.2015 under clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947(in short the Act) from the Central Government, Ministry of Labour and Employment for adjudication of an industrial dispute, terms of which are as under:

‘Whether the action of the management of Delite Systems Engineering (I) Pvt. Ltd. in not allowing the workman Shri Suresh Kumar, S/o Shri Sumera to resume his duty after getting medically fit can be construed as illegal termination? If yes, what relief the workman concerned is entitled to?’

2. Claim statement was filed by Shri Suresh Kumar, the claimant herein, averring that he was appointed as House Keeping worker by Delite Systems Engineering (I) Pvt. Ltd. on 01.09.2010 and his last drawn wages was Rs.8554.00. The claimant worked with honesty and sincerity with the management and never gave any chance of complaint regarding his work. Delhi International Airport (P) Ltd. is the principal employer who used to take work from him. M/s. Delite Systems Engineering (I) Pvt. Ltd. was engaged as contractor for development and management of IGI Airport and issued entry pass to the claimant herein for performance of his duties. The claimant was not provided the legal facilities such as weekly holidays, minimum wage, festival holidays and PF, despite making several requests. On 03.05.2014, the claimant was asked to carry the trolley, which he refused as he was a sweeper. Since he was threatened with termination, the claimant was forced to carry the trolley which fell on his left hand and his index finger was amputated and he had to undergo treatment. The claimant also filed an FIR against the management on 05.07.2014. After recovery, when the claimant went to resume duties, he was not allowed to resume duties until and unless the FIR against the management was withdrawn. However, the claimant refused to withdraw the FIR filed against the management. The claimant was finally terminated on 04.09.2014, which is illegal, unjustified and against principles of industrial law. Finally, it has been prayed that he may be reinstated in service with continuity and full back wages.
3. Written statement was filed on behalf of Delhi International Airport (P) Ltd. wherein various preliminary objections were taken, inter alia that the claimant was never appointed by them, workman being direct control of M/s. Delite Systems Engineering (I) Pvt. Ltd. etc. Management of Delhi International Airport (P) Ltd. has denied the other material facts contained in the statement of claim.

4. M/s. Delite Systems Engineering (I) Pvt. Ltd., in the meanwhile, stated at the bar that there are chances of settlement. Finally, amicable settlement was arrived at between the parties. Claimant accepted the offer that he is ready and willing to accept an amount of Rs.55,000.00 as full and final settlement and his statement was recorded on 21.08.2017 to the effect that he has settled all his disputes with the management. Statement of Shri Suresh Kumar, Manager:IR on behalf of the management was also recorded on 26.09.2016.

5. In view of the statements made by the claimant as well as Shri Suresh Kumar, Manager:IR of the management, case has been finally settled between the parties and no controversy survives between the parties. Settlement agreement and release marked Ex.C-1 shall form integral part of the award. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : August 25, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2316.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सेन्ट्रल वेयरहाउसिंग कॉर्पोरेशन एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 181/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2017 को प्राप्त हुआ था।

[सं. एल-42012/6/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 25th September, 2017

**S.O. 2316.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 181/2015) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Central Warehousing Corporation and others and their workman, which was received by the Central Government on 19.09.2017.

[No. L-42012/6/2014-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 2, KARKARDOOMA COURT COMPLEX, DELHI**

**ID. NO. 181/2015**

Shri Saleem S/o Shri Ashiq Ali,  
Through General Mazdoor Lal Jhanda Union,  
B-1A, Nathu Colony (East), 100 Foota Road,  
Delhi-110093

...Workman

#### Versus

1. The Manager,  
Aqdas Maritime Agency Pvt. Ltd. 32/33,  
Eastern Chamber, 4<sup>th</sup> Floor, 128-A,  
Nandlal Jani Marg, (Poona Street),  
Mumbai-400009.
2. The managing Director,  
Central Warehousing Corporation ,  
4/1, Siri Fort Industrial Area,  
August Kranti Marg, Hauz Khas,  
New Delhi -110016.
3. The Regional Manager,  
Central Warehousing Corporation,

Scope Minar, First floor, Laxmi Nagar,  
New Delhi -110092.

4. The Manager,  
M/s Suman Forwarding Agency Pvt. Ltd.  
ICD, Near Gazipur Village, Patparganj,  
Delhi -110096

...Management

### AWARD

In the present case, a reference was received from the appropriate Government vide letter No.L-42012/6/2014-IR(M) dated 26.08.2014 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

“Whether termination of Shri Saleem S/o Shri Ashiq Ali, by the management no. 4 i.e. Suman Forwarding Agency Pvt. Ltd. w.e.f 03.01.2013 without making payment of legitimate dues is just, fair and legal? If not what relief will be given to the workman and from which date?” Whether the management no. 1 & 2 i.e. Central Warehousing Corporation is responsible to ensure and secure continuance of employment of Shri Saleem S/o Shri Ashiq Ali, in the establishment of new contractor appointed for undertaking the job of such contractor i.e management no. 3. If not what relief workman concerned is entitled to?

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : September 07, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2017

**का.आ. 2317.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सेन्ट्रल वेयरहाउसिंग कार्पोरेशन एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 186/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2017 को प्राप्त हुआ था।

[सं. एल-42012/33/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 25th September, 2017

**S.O. 2317.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 186/2015) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Central Warehousing Corporation and others and their workman, which was received by the Central Government on 19.09.2017.

[No. L-42012/33/2014-IR (M)]

RAJESH KUMAR, Under Secy.

**ANNEXURE****IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 2, KARKARDOOMA COURT COMPLEX, DELHI****ID. NO. 186/2015**

Shri Rakesh Yadav S/o Shri Matafear Yadav,  
Through General Mazdoor Lal Jhanda Union,  
B-1A , Nathu Colony (East), 100 Foota Road,  
Delhi-110093

...Workman

**Versus**

1. The Manager,  
Aqdas Maritime Agency Pvt. Ltd. 32/33,  
Eastern Chamber, 4<sup>th</sup> Floor, 128-A,  
Nandlal Jani Marg, (Poona Street),  
Mumbai-400009.
2. The managing Director,  
Central Warehousing Corporation ,  
4/1, Siri Fort Industrial Area,  
August Kranti Marg, Hauz Khas,  
New Delhi -110016.
3. The Regional Manager,  
Central Warehousing Corporation,  
Scope Minar, First floor, Laxmi Nagar,  
New Delhi -110092.
4. The Manager,  
M/s Suman Forwarding Agency Pvt. Ltd.  
ICD, Near Gazipur Village, Patparganj,  
Delhi -110096

...Management

**AWARD**

In the present case, a reference was received from the appropriate Government vide letter No. L-42012/33/2014-IR(M) dated 18.02.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

“Whether termination of Shri Rakesh Yadav, S/o Shri Matafear Yadav, w.e.f. 03.01.2013 by the management no. 4 i.e. Suman Forwarding Agency Pvt. Ltd. without making payment of legitimate dues is just, fair and legal? If not what relief will be given to the workman and from which date?” Whether the management no. 1 & 2 i.e. Central Warehousing Corporation is responsible to ensure and secure continuance of employment of Shri. Rakesh S/o Shri Matafear Yadav in the establishment of new contractor appointed for undertaking the job of such contractor i.e management no. 3 Aqdas Maritime Agency Pvt.Ltd. If not what relief workman concerned is entitled to?

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file his claim statement with the Tribunal.
3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : September 07, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2017

**का.आ. 2318.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ई. सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 04/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.09.2017 को प्राप्त हुआ था।

[ सं. एल-22013/01/2017-आईआर (सीएम-II) ]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 26th September, 2017

**S.O. 2318.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/1998) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in Annexure, in the industrial dispute between the management of M/s. E.C.L. and their workmen, received by the Central Government on 08.09.2017.

[No. L-22013/01/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

**PRESENT :** Sri Pramod Kumar Mishra, Presiding Officer

**L.C. APPLICATION NO. 04 OF 1998**

#### PARTIES :

Sri Dilip Chatterjee

V/s.

Medical Superintendent, Kajora Area Hospital of M/s. ECL & 2 Others

#### REPRESENTATIVES :

For the management : Sri U. K. Porel, Learned Management Representative

For the union (Workman) : Sri D. K. Routh, Learned Union Representative

Industry : Coal

State : West Bengal

Dated: 14.08.2017

#### ORDER

1. An application under section 33 (C) (2) of the Industrial Disputes Act, 1947 was filed on behalf of the applicant Sri Dilip Chatterjee against the Medical Superintendent of Kajora Area Hospital of M/s. ECL, Medical Superintendent; C.M.O.'s Office, M/s. ECL, HQ; Finance Manager, Area Office, Kajora Area, M/s. ECL.

2. This application was registered as L. C. Application No. **04 of 1998** on 25.03.1998 and accordingly an Order to that effect was passed to issue notices to respective parties through the registered post directing them to appear in the

Court on the date fixed and file their written statement along with the relevant documents and a list of witnesses in support of their claim. In pursuant to the said Order notices by the registered post were issued to the parties concerned.

3. The workman Shri Dilip Chatterjee, Electrician has submitted application through union representative, Shri D. K. Routh under Section 33-C(2) of Industrial Dispute Act, 1947 for recovery of Rs. 38,000/- (Rupees Thirty Eight Thousand only). The allegation of the workman is that he had been Electrician, posted and working at Kajora Area Hospital under Kajora Area of M/s. Eastern Coalfields Limited. His mother was referred by the Medical Superintendent of Central Hospital, Kalla of M/s. Eastern Coalfields Limited duly approved by the M/s. Eastern Coalfields Limited Head, Quarter for the purpose of special treatment at SSKM Hospital, Kolkata. The applicant Shri Dilip Chatterjee spent Rs. 38,000/- (Rupees Thirty Eight Thousand only) being a life saving measure as instructed by the treating doctor at SSKM, Kolkata. Thereafter Shri Dilip Chatterjee, the applicant submitted his claim which was recommended by the Medical Superintendent of Central Hospital, Kalla of M/s. Eastern Coalfields Limited. But the Medical Superintendent at Chief Medical Officer's Office, M/s. Eastern Coalfields Limited, Headquarter has refused to pay the legitimate claim with a view for deprivation and discrimination and in violation of the MAT rule and National Coal Wage Agreement / JBCCI from II to IV.

4. On perusal of the case record I find that from 07.10.2015 none appeared on behalf of the applicant. Since 07.10.2015 more than 1½ (One and Half) years have already been passed in which several opportunities were granted to Shri Dilip Chatterjee but he did not care to appear before the court. On 28.03.2017 Dr. Uttam Kumar Porel appeared on behalf of the opposite parties but none appeared for the applicant. It seems that the applicant has lost his interest to proceed with the case so, after hearing the argument of Dr. Uttam Kumar Porel, representative of the opposite party the application was reserved for order.

5. The Hon'ble Apex court in **State Bank of India v/s Ram Chandra Dubey, 2000 (87) FLR 849 (SC)** has held that :

*"Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under section 33-C(2) of the Act. The benefit sought to be enforced under section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under section 33-C(2) of the Act while the latter does not. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom, a reference under section 10 of the Act is made."*

6. The claim of the applicant, as per law propounded by the Hon'ble Apex Court the claim should be a pre-existing benefit. Therefore, the appropriate forum would be Section 10 of Industrial Dispute Act, 1947. The claim of the applicant should be decided under Section 10 of Industrial Dispute Act, 1947. If the Tribunal passes an Award under Section 10 of Industrial Dispute Act, 1947, only then the applicant can move his application under Section 33-C(2) of Industrial Dispute Act, 1947.

7. In view of the discussion above, since the claim of the applicant is not pre-adjudicated, therefore the application is not maintainable under Section 33-C(2) of Industrial Dispute Act, 1947. The Application of the applicant, Shri Dilip Chatterjee is hereby rejected.

### ORDERED

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2017

**का.आ. 2319.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या एलसी 14/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.09.2017 को प्राप्त हुआ था।

[सं. एल-22013/01/2017-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 26th September, 2017

**S.O. 2319.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. LC 14/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd. and their workmen, received by the Central Government on 13.09.2017.

[No. L-22013/01/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Sri Muralidhar Pradhan, Presiding Officer

Dated : the 23<sup>rd</sup> day of August, 2017

#### INDUSTRIAL DISPUTE L.C. No. 14/2007

#### Between :

Sri Kondrapur Bheem Rao,  
S/o Ramu,  
C/o Smt. A. Sarojana,  
Advocate, Flat No.G7,  
Rajeshwari Gayatri Sadan,  
Opp: Badruka Jr. College for Girls,  
Kachiguda, Hyderabad

...Petitioner

#### AND

1. The General Manager,  
M/s. Singareni Collieries Company Ltd.,  
Mandamarri Area, Mandamarri. Adilabad District
2. The Superintendent of Mines,  
M/s. Singareni Collieries Company Ltd.,  
KK-5A Incline, Mandamarri,  
Adilabad District

...Respondents

#### Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

## AWARD

Sri Kondrapu Bheem Rao who worked as Coal Filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring proceeding No. P/MM/7/2/01/1865 dated 14.4.2001 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

#### 2. The averments made in the petition in brief are as follows:

The Petitioner was initially appointed as badli filler on 14.4.1987 and later he was promoted as Coal Filler. The Petitioner was regular to his duties till the year 1998. During the year 1999 the Petitioner suffered from several ailments, such as Tuberculosis and other family problems. While the matters stood thus, charge sheet dated 31.1.2000 was issued to the Petitioner by the Respondents alleging that the Petitioner absented for duty during the year 1999, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Petitioner was dismissed from service vide order No.

P/MM/7/2/01/1865 dated 14.4.2001. It is stated that during the course of the enquiry the Petitioner has categorically stated about his inability to perform his duties regularly during the year 1999, as it was only on account of his ill-health. But without considering any of his submissions, the Petitioner was dismissed from service. It is also stated that the action of the Respondents management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered 12 years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. P/MM/7/2/01/1865 dated 14.4.2001 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

**3. The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:**

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondents' company on 11.4.1987 as Badli Filler and continued to be as badlifiller till his dismissal. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the dates fixed for the enquiry and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondents were constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed by the Counsel for the Petitioner conceding the legality and validity of the domestic enquiry conducted in the present case, the domestic enquiry conducted by the Respondents is held as legal and valid vide order dated 6.7.2009.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

**6. In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Kondrapu Bheem Rao is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No. I :** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to tuberculosis and family problems, the Petitioner could not be able to attend his duty sincerely. Even in his show cause the Petitioner has mentioned the above fact, but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness, and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. The authority has not considered any of the submissions of the Petitioner, and has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and other family problems, the Petitioner could not be able to be regular in his duty, the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry.

In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 36 years, he is now aged about 46 years and is searching ways and means to provide bread and butter to his family members. When the Petitioner being an able bodied and energetic man has already realised his mistake and is coming forward to work under the Respondents, atleast one chance should be given to him for reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. The Petitioner is a first offender and has worked for about 12 years under the Respondent. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Kondrapu Bheem Rao is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been held that the punishment of dismissal from service to Sri Kondrapu Bheem Rao is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But in this case, the Petitioner has not come to the court soon after the dismissal of his service. In the opinion of this Tribunal the Petitioner is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondents' management and as such he is entitled to be reinstated.

Thus, Point Nos. II & III are answered accordingly.

### ORDER

Proceeding No. P/MM/7/2/01/1865 dated 14.4.2001 issued by Respondent No.1 is declared as illegal and is hereby set aside. It is ordered that the workman Sri Kondrapu Bheem Rao be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 180 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry and in the event of completion of one year probation satisfactorily the workman is to continue in service till the age of attaining superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 23<sup>rd</sup> day of August, 2017.

MURALIDHAR PRADHAN, Presiding Officer

### Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

### Documents marked for the Petitioner

NIL

### Documents marked for the Respondent

NIL

नई दिल्ली, 26 सितम्बर, 2017

**का.आ. 2320.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या एलसी 35/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.09.2017 को प्राप्त हुआ था।

[सं. एल-22013/01/2017-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 26th September, 2017

**S.O. 2320.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. LC 35/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd. and their workmen, received by the Central Government on 13.09.2017.

[No. L-22013/01/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Sri Muralidhar Pradhan, Presiding Officer

Dated : the 23<sup>rd</sup> day of August, 2017

### INDUSTRIAL DISPUTE L.C. No. 35/2010

#### Between :

Sri Sk. Mahaboob,  
S/o Goremiyan,  
C/o Smt. A. Sarojana,  
Advocate, Flat No.G7,  
Rajeshwari Gayatri Sadan,  
Opp: Badruka Jr. College for Girls,  
Kachiguda, Hyderabad

...Petitioner

#### AND

1. The Project Officer,  
M/s. Singareni Collieries Company Ltd.,  
Bhupalpally, Warangal District.
2. The Dy. General Manager,  
M/s. Singareni Collieries Company Ltd.,  
KTK-1 Incline, Bhupalpally,  
Warangal District

...Respondents

#### Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates  
For the Respondent : Sri S.M. Subhani, Advocate

### AWARD

Sri Sk. Mahaboob who worked as Coal Filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. BHP/PER/20-D/4254 dated 18.12.2004 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows:**

The Petitioner was initially appointed as badli coal filler on 2.2.1996 and later he was confirmed as Coal Filler in the year 1999. While the matters stood thus, charge sheet dated 18.12.2004 was issued to the Petitioner by the Respondents alleging that the Petitioner absented for duty during the year 2002, which amounts to misconduct under company's Standing Order No.25.25 and 25.31. It is also stated that the charge sheet was sent to the Petitioner's house which was returned undelivered, and as such a paper advertisement was issued, advising the Petitioner to attend for enquiry, and as the Petitioner did not attend the enquiry on the scheduled date, an ex-parte enquiry was conducted and he was dismissed from service. The Petitioner was undergoing treatment in his native village and he was not aware of either issuance of charge sheet or publication made by the Respondents in the newspapers. The Petitioner could have certainly participated in the enquiry, if really he was in receipt of the charge sheet or notice of paper publication. It is stated that the Petitioner was unable to perform his duties regularly during the year 2002 only on account of his ill-health and other family problems, for this he could not attend his duties sincerely, but without considering any of his submissions, the Petitioner was dismissed from service vide office order dated 18.12.2004. It is also stated that the action of the Respondents' management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered about 8 years of continuous service in the Respondents' management. He remained absent from duty only on account of his sickness and family problems which ought not to have been treated as a serious misconduct. The Petitioner made the above stated submissions, but without considering any of his submissions, the Petitioner was dismissed from service vide office order dated 18.12.2004. The Petitioner approached the Respondents to consider his case sympathetically but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. BHP/PER/20-D/4254 dated 18.12.2004 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

**3. The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:**

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondents' company on 1.2.1996 as Badli Filler and later drafted as Coal Filler with effect from 1.3.2000. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner had remained absent unauthorizedly from duty without sufficient cause on a number of days and attended four days for duty during the calendar year 2002. A charge sheet was sent to his last known home address as per the procedure as he was not attending for duty, which was returned undelivered. Subsequently, the same was published in Andhra Jyothi Telugu daily newspaper dated 14.8.2003 advising the Petitioner to attend an enquiry fixed on 1.9.2003. The Petitioner neither submitted any explanation to the charge sheet nor attended the enquiry, as such an ex-parte enquiry was conducted on 1.9.2003 wherein the charges levelled against the Petitioner were proved. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving an opportunity to make representation against the findings made in the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record, and found that there was no extenuating circumstances to take a lenient view and lastly, Respondent No.1 was constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition be dismissed in limini.

4. In view of the memo filed by the Counsel for the Petitioner conceding the legality and validity of the domestic enquiry conducted in the present case, the domestic enquiry conducted by the Respondents is held as legal and valid vide order dated 16.12.2016.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

**6. In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Sk. Mahaboob is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.I:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to tuberculosis and family problems, the Petitioner could not be able to attend his duty sincerely. Even in his show cause the Petitioner has mentioned the above fact, but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness, and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. The authority has not considered any of the submissions of the Petitioner, and has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and other family problems, the Petitioner could not be able to be regular in his duty, the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 34 years, he is now aged about 41 years and is searching ways and means to provide bread and butter to his family members. When the Petitioner being an able bodied and energetic man has already realised his mistake and is coming forward to work under the Respondents, atleast one chance should be given to him for reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. The Petitioner is a first offender and has worked for about 8 years under the Respondent. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Sk. Mahaboob is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Sk. Mahaboob is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But in this case, the Petitioner has not come to the court soon after his dismissal of service. In the opinion of this Tribunal the Petitioner is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

### ORDER

Proceeding No. BHP/PER/20-D/4254 dated 18.12.2004 issued by Respondent No.1 is declared as illegal and is hereby set aside. It is ordered that the workman Sri Sk. Mahaboob be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 180 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry and in the event of completion of one year of probation satisfactorily, the workman is to continue in service till the age of attaining superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 23<sup>rd</sup> August, 2017.

MURALIDHAR PRADHAN, Presiding Officer

**Appendix of evidence**

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

**Documents marked for the Petitioner**

NIL

**Documents marked for the Respondent**

NIL

नई दिल्ली, 26 सितम्बर, 2017

**का.आ. 2321.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या एलसी 147/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.09.2017 को प्राप्त हुआ था।

[सं. एल-22013/01/2017-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 26th September, 2017

**S.O. 2321.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. LC 147/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd. and their workmen, received by the Central Government on 13.09.2017.

[No. L-22013/01/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD**

**Present :** Sri Muralidhar Pradhan, Presiding Officer

Dated : the 12<sup>th</sup> day of July, 2017

**INDUSTRIAL DISPUTE L.C. No. 147/2006**

**Between :**

Sri Eluka Lakshminarayana,  
S/o Mallaiah,  
C/o Smt. A. Sarojana,  
Advocate, Flat No.G7,  
Rajeshwari Gayatri Sadan,  
Opp: Badruka Jr. College for Girls,  
Kachiguda, Hyderabad

...Petitioner

**AND**

1. The General Manager,  
M/s. Singareni Collieries Company Ltd.,  
Mandamarri, Adilabad District.

2. The Superintendent of Mines,  
M/s. Singareni Collieries Company Ltd.,  
MK-4 Incline, Mandamarri,  
Adilabad District

...Respondents

**Appearances :**

- For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates  
For the Respondent : Sri V.S.V.S.R.K.S. Prasad, Advocate

**AWARD**

Sri Eluka Lakshminarayana who worked as Coal Filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. P/RKP/16/98/3457 dated 12.11.1998 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows:**

The Petitioner was initially appointed as badli filler in the year 1990 and later he was confirmed as Coal Filler in the year 1995. The Petitioner was regular to his duties till the year 1997. While the matters stood thus, charge sheet dated 4.9.1998 was issued to the Petitioner by the Respondents alleging that the Petitioner absented for duty during the year 1997, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Petitioner was dismissed from service vide order No. P/RKP/16/98/3457 dated 12.11.1998. It is stated that during the course of the enquiry the Petitioner has categorically stated about his inability to perform his duties regularly during the year 1997 as it was only on account of his ill-health. But without considering any of his submissions, the Petitioner was dismissed from service. It is also stated that the action of the Respondents management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered 7 years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. P/RKP/16/98/3457 dated 12.11.1998 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:**

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondents' company on 5.11.1990 as Badli Filler and was later regularized as Coal Filler. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the dates fixed for the enquiry fixed and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondents were constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed by the Counsel for the Petitioner conceding the legality and validity of the domestic enquiry conducted in the present case, the domestic enquiry conducted by the Respondents is held as legal and valid vide order dated 13.4.2009.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. **In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Eluka Lakshminarayana is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.I** : During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to illness and family problems, the Petitioner could not be able to attend his duty sincerely. Even in his show cause the Petitioner has mentioned the above fact, but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness, and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. The authority has not considered any of the submissions of the Petitioner, and has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and other family problems, the Petitioner could not be able to be regular in his duty, the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 35 years, he is now aged about 46 years and is searching ways and means to provide bread and butter to his family members. When the Petitioner being an able bodied and energetic man has already realised his mistake and is coming forward to work under the Respondents, atleast one chance should be given to him for reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. The Petitioner is a first offender and has worked for about 7 years under the Respondent. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Eluka Lakshminarayana is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III**: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Eluka Lakshminarayana is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But in this case, the Petitioner has not come to the court soon after his dismissal of service. In the opinion of this Tribunal the Petitioner is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

### **ORDER**

Proceeding No. P/RKP/16/98/3457 dated 12.11.1998 issued by Respondent No.1 is declared as illegal and is hereby set aside. It is ordered that the workman Sri Eluka Lakshminarayana be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the

management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 12<sup>th</sup> day of July, 2017.

MURALIDHAR PRADHAN, Presiding Officer

#### Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

#### Documents marked for the Petitioner

NIL

#### Documents marked for the Respondent

NIL

नई दिल्ली, 26 सितम्बर, 2017

**का.आ. 2322.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ई. सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 27/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.09.2017 को प्राप्त हुआ था।

[सं. एल-22012/299/2006-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 26th September, 2017

**S.O. 2322.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in Annexure, in the industrial dispute between the management of M/s. E.C.L. and their workmen, received by the Central Government on 08.09.2017.

[No. L-22012/299/2006-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

**PRESENT :** Sri Pramod Kumar Mishra, Presiding Officer

#### REFERENCE NO. 27 OF 2007

#### PARTIES :

The management of North Searsole Colliery of M/s. E.C.L.

**Vs.**

Shri Sudhir Bhuiya

#### REPRESENTATIVES :

For the management : Shri P. K. Goswami, Learned Advocate

For the union (Workman) : Shri H. L. Soni, Learned Union Representative

Industry : Coal

State : West Bengal

Dated: 22.08.2017

**AWARD**

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/299/2006-IR(CM-II)** dated 22.03.2007 has been pleased to refer the following dispute for adjudication by this Tribunal.

**SCHEDULE**

*“Whether the action of management of North Searsole Colliery of M/s. ECL in dismissing Shri Sudhir Bhuiya w.e.f. 28.04.2003 is legal and justified? If not, to what relief is the workman entitled? ”*

1. Having received the Order **NO. L-22012/299/2006-IR(CM-II)** dated 22.03.2007 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. **27 of 2007** was registered on 03.05.2007. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. The workman Shri Sudhir Bhuiya has filed written statement through union representative. He has alleged in his written statement that he was in employment of the company as U.G. Loader. He was posted at North Searsole Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited. Unfortunately Shri Sudhir Bhuiya fell ill. The workman due to sickness could not attend his duty from 31.12.2001 to 24.03.2002. He was under the treatment of the Medical Practitioner. The total period of absence is less than 3 (Three) months and that too on medical ground. After recovery from illness, Shri Sudhir Bhuiya reported for duty on 24.03.2002, but he was not allowed to resume his duty rather he was chargesheeted vide Chargesheet No. ECL/4338/CS/2002/4419 dated 24/27.03.2002. The management was aware that the workman was present in the colliery but deliberately sent the Notice of Enquiry to his home address. The workman was not aware of the enquiry proceeding. Therefore he could not attend the enquiry nor could he produce any documentary evidence to defend his case. The management conducted the enquiry ex-parte. He was not given adequate opportunity to defend his case and to prove his innocence. Thus gross injustice has been committed by denial of principles of natural justice. The total period of absence of workman is hardly 2 (Two) months and 24 (Twenty Four) days and that too on medical ground. In spite of the fact mentioned above the General Manager of Kunustoria Area of M/s. Eastern Coalfields Limited vide his Letter No. ANKT/P&IR/26(C)/603 dated 28.04.2003 has dismissed the workman from service. The extreme punishment of dismissal is not only harsh but also disproportionate to the nature of offence alleged to have been committed by the workman Shri Sudhir Bhuiya and that too due to sickness which was beyond his control. The dismissal of Shri Sudhir Bhuiya from service of the company is illegal and unjustified. The workman has prayed that management of north Searsole to be directed to reinstate Shri Sudhir Bhuiya with payment of full back wages and other consequential benefits from the date of dismissal.

3. The Agent of North Searsole Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited has alleged in his written statement that Shri Sudhir Bhuiya was a workman who was unauthorized absent for which he was warned and SPRA was stopped but could not mend his manner of unauthorized absence. He remained absent from 31.12.2001 to 27.03.2002 and even no information was sent regarding his absence. Considering his unauthorized absence as well as the past record of the workman the management was compelled to serve a Chargesheet under Section - 26.23 for habitual absence from duty without sufficient cause and Section - 26.29 for absence from duty beyond 10 (Ten) days without sanctioned leave or sufficient cause of Certified Standing Order. Shri Sudhir Bhuiya did not reply to the Chargesheet. An Enquiry Officer was appointed to hold a departmental enquiry and accordingly Notices of Enquiry was served upon him, but Shri Sudhir Bhuiya did not appear before the Enquiry Officer as a result of this the enquiry was held ex-parte on 22.08.2002. As per the past record of Shri Sudhir Bhuiya, his attendance was only 167 days in the year 1999; only 162 days in the year 2000; and only 77 days in the year 2001. The Enquiry officer considered all the aspects and found him guilty of the charges leveled against him and after concluding the enquiry a report was submitted. The competent authority of the management considering all the aspects and past record of Shri Sudhir Bhuiya thought for not showing any leniency and dismissed him accordingly. Shri H. L. Soni, Secretary of Koyala Mazdoor Congress by his letter dated 03.07.2006 raised the dispute for the first time before the Assistant Labour Commissioner (Central), after expiry of about 3 (Three) years of dismissal without any reason. The action of management of North Searsole Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited in dismissing Shri Sudhir Bhuiya is legal and justified and concerned workman is not entitled to any relief.

4. The workman has filed the following documents:-

(i) Photocopy of the Dismissal Letter dated 25/28.04.2003, (ii) Photocopy of the Chargesheet dated 24/27.03.2002, (iii) Photocopy of the Representation/Application of Shri Sudhir Bhuia dated 28.10.2002, (iv) Photocopy of the Representation/Application of Shri Sudhir Bhuia dated 14.01.2003, (v) Photocopy of the Enquiry Proceeding.

The workman Shri Sudhir Bhuia has filed affidavit in his oral evidence. He has been cross-examined by the Learned Advocate of the North Searsole Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited.

The Agent of North Searsole Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited has neither filed any documentary evidence nor examined any witness in oral evidence.

5. I have heard the arguments of Shri H. L. Soni, Learned Union Representative on behalf of Shri Sudhir Bhuia, the workman and Shri P. K. Goswami, Learned Advocate on behalf of the management of North Searsole Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited.

6. Shri H. L. Soni, Learned Union Representative for the workman has argued that the workman was absent due to sickness for a period of 2 (Two) months and 24 (Twenty Four) days. When he reported for duty he was not allowed to resume his duty rather he was Chargesheeted. The Notice of Enquiry was sent to his home address while the workman was present at working place. He did not receive the Notice of Enquiry. The enquiry proceeded ex-parte. The Enquiry Officer conducted the enquiry in violation of principles of natural justice. On the other hand Shri P. K. Das, Learned Advocate for the management has argued that workman was not sick. He had notice of enquiry but he was not present in the enquiry proceeding deliberately.

7. It is not disputed that Shri Sudhir Bhuia was U. G. Loader at North Searsole Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited. It is admitted fact that he was absent from duty from 31.12.2001 to 24.03.2002. He had been dismissed after departmental enquiry. The workman has challenged the departmental enquiry being devoid of principles of natural justice.

8. From perusal of Chargesheet it is manifest that the workman has been Chargesheeted for not only the period in question i.e. 31.12.2001 to 27.03.2002 but he has been Chargesheeted for his previous absence also. He was present only 167 days in the year 1999, only 162 days in the year 2000 and only 77 days in the year 2001. For his previous absence he was already Chargesheeted and had been punished with stoppage of 1 SPRA vide Letter No. ECL/4338/Stoppage of SPRA/01/3109 dated 17.12.2001. The fact of previous absence had not been denied or explained in his oral evidence.

9. The workman has filed copy of 2 (Two) letters 28.10.2002 and 14.01.2003. The delinquent workman Shri Sudhir Bhuia vide letter dated 28.10.2002 addressed to the Agent of North Searsole Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited has submitted that he did not receive Notice of Enquiry because he was present at duty place. Notice was sent to his native village. The delinquent workman, Shri Sudhir Bhuia by letter dated 14.01.2003 has requested the Enquiry Officer that he was present at colliery due to which he did not receive the Notice of Enquiry sent to his native village. The 1<sup>st</sup> Notice of Enquiry was sent vide Ref: No. ECL/4338/Enquiry/2002/4030 dated 19.12.2002. From perusal of Enquiry Report it is apparent that due to absence of workman from duty w.e.f 31.12.2001 without information ex-parte enquiry was held and referred to higher authorities. As per advice of higher authority departmental enquiry was reopened and Notice of Enquiry vide Ref: No. ECL/4338/Enquiry/2002/4030 dated 19.12.2002 was sent to both the parties. And the date of enquiry was fixed for 06.01.2003 at 11:00 A.M. in the Office of the Personnel Manager of North Searsole Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited. From perusal of the enquiry proceeding it transpires that the Enquiry Officer on 06.01.2003, date fixed for Enquiry waited for the workman till 12 (Twelve) O'clock noon, but the workman neither appeared on date fixed nor tendered adjournment application. The Enquiry Officer suo moto adjourned the proceeding and fixed the next date 09.04.2003 near about after 3 (Three) months. Even on 09.04.2003 the delinquent workman neither appeared in the Enquiry nor requested to adjourn the enquiry proceeding. At the cost of repetition it is relevant to mention that enquiry was conducted ex-parte due to non-appearance of the workman. But when the workman pleaded that he had no knowledge of enquiry, enquiry proceeding was re-opened on the request of the delinquent workman. But on date fixed for the enquiry i.e. 06.01.2003 and 09.04.2003 the workman did not appear in the enquiry proceeding. The Enquiry Officer had no option left, proceeded the enquiry ex-parte. Reasonable opportunity means that no man should be condemned unheard. But if the delinquent workman does not avail the opportunity made available to him he can not challenge the enquiry proceeding. It was a duty of delinquent workman to appear and participate in enquiry proceeding. If the delinquent workman having knowledge of enquiry proceeding deliberately does not appear or willfully abstained himself from the enquiry proceeding then, the Enquiry Officer can very well proceed ex-parte. From perusal of enquiry proceeding it is apparent that Enquiry Officer did not proceed in haste. After 06.01.2003 he fixed the next date after 3 months. The workman has submitted the 2<sup>nd</sup> letter on 14.01.2003. It indicates that before 09.04.2003 he had knowledge of enquiry proceeding but he deliberately did not appear in the enquiry proceeding.

**10.** So far as Notice of Enquiry sent to his home address is concerned, the allegation of the workman does not inspire confidence at all. The workman has alleged in his written statement and evidence that he returned after recovering sickness and intended to resume his duty on 24.03.2002 but he was chargesheeted on 27.03.2002. When the workman has himself admitted that he was not allowed to resume his duty, then he can not be supposed to be present at the place of duty. Therefore, the Enquiry Officer was right in sending Notice of Enquiry to his native place, the recoded address in his Service Excerpt. The workman has not mentioned any alternate address in his written statement or in his oral evidence. The denial of Notice without any justification is unacceptable. The copy of Notice send by the Enquiry Officer is on record.

**11.** The delinquent had been habitual absentee for which he has been previously punished. He absented himself from duty without sufficient cause even after knowledge of enquiry proceeding. He deliberately abstained himself from participating in enquiry proceeding, though the Enquiry Officer re-opened the enquiry proceeding at the request of delinquent workman. In the circumstance mentioned above the punishment of dismissal is justified.

**12.** The action of management of North Searsole Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited in dismissing Shri Sudhir Bhuiya w.e.f. 28.04.2003 is legal and justified. The workman is not entitled to any relief.

### ORDER

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2017

**का.आ. 2323.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ सं. 22/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.09.2017 को प्राप्त हुआ था।

[सं. एल-12012/89/2011-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 26th September, 2017

**S.O. 2323.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure in the Industrial Dispute between the management of UCO Bank and their workmen, received by the Central Government on 26.09.2017.

[No. L-12012/89/2011-IR (B-II)]

RAVI KUMAR, Desk Officer

### ANNEXURE

#### IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT GUWAHATI, ASSAM

**Present :** Shri M.K. Bhattacharjee, M.A., LL.B  
Presiding Officer,  
CGIT-cum-Labour Court, Guwahati

#### Ref. Case No. 22 of 2012

#### In the matter of an Industrial Dispute between :-

The Management of UCO Bank, Zonal Office, Silphukuri, Guwahati.

-Vrs-

Their workman Md. Dhan Ali.

#### APPEARANCES :

For the Workman : Mr. M. Roy, Union Representative.

For the Management : Mr. A. Mhukherjee, Advocate.

Date of Award: 31.08.2017

### AWARD

1. The present reference arose out of an Industrial dispute between workman Md. Dhan Ali and the Management of UCO Bank, Zonal Office, Silpukhuri, Guwahati. According to the Central Government, an Industrial Dispute exists between the employer in relation to the Management of UCO Bank of India and their workman in respect of the matters which have been specified in the Schedule as under:

### SCHEDULE

**“Whether the action of the UCO bank management in dismissing the services of Shri Md. Dhan Ali, Part Time Sweeper (PFM No.42166) vide Order dated 21-7-2008 is proper and justified? What relief the workman is entitled to?”**

2. On receipt of notice both parties appeared and submitted their respective claim statement and written statement.
3. The workman's case is that while he was working as Part Time Sweeper at Bhella Branch of UCO Bank, a complaint was filed against him with the allegation that he had received, in total, Rs.12,500/- from a customer for depositing in the customer's RD account but did not deposit the same. Workman claimed that he was an illiterate person and was never authorized to deal with cash and nor did he receive any cash from the customer. He also alleged that since he was illiterate the Bank management forced him to repay Rs.12,500/- by taking loan from his Provident Fund and thereafter he was transferred to Mukalmua Branch of the Bank. It was also alleged that in the month of February, 2008 a Disciplinary Proceeding was drawn against him. Being an illiterate person he could not arrange a defence representative for him and thereafter the management most illegally in the name of completing the Disciplinary Enquiry dismissed him from service vide order dated 21.7.2008. He also alleged that he was not given any chance to contest the Disciplinary Proceeding and the entire proceeding was illegal per-se. He was not given reasonable opportunity to defend himself on the Disciplinary Proceeding and thereby natural justice was denied to him. After passing of the dismissal order the workman submitted an Appeal on 01.09.2008 against the final order of dismissal but the same has not been disposed of by the Appellate Authority. On the aforesaid ground the workman prayed for the intervention of this Tribunal and sought reinstatement in service along with back-wages and other benefits.
4. The management submitted written statement denying the allegations that Disciplinary Proceeding was held in violation of principle of natural justice and it was also stated that the workman was given reasonable opportunity to defend himself but he failed to engage any defence representative. According to the management, Santipur Mahila Samabay Samittee had a Recurring Deposit Account at Bhella Branch of UCO Bank and the account was opened on 09.12.2004 and the date of maturity was 09.12.2007. When the Pass Book was presented for maturity payment, it was found that as per entry in the Pass Book all the 36 installments were deposited but as per Bank's Ledger 5 installments of Rs.2,500/- on 02.06.2008, 14.08.2006, 28.8.2006, 16.11.2006 and 26.12.2006 amounting to Rs.12,500/- were not deposited to the Bank. While the Bank enquired with the Account holder they said that they paid those five installments to workman Dhan Ali on good faith to deposit the same in their Recurring Deposit Account but ultimately it transpired that the workman did not deposit the amount in the respective Recurring Deposit Account. It was also stated that by his letter dated 14.12.2007 addressed to the Branch Manager, Bhella Branch, the workman admitted the aforesaid misconduct committed by him and also requested the Branch Manager to deposit Rs.12,500/- in the aforesaid Recurring Deposit Account from his own Provident Fund Account. Thereafter the Bank initiated a Disciplinary Proceeding against the workman and charge-sheet was served upon him on 03.01.2008 and the workman was asked to submit his explanation/written statement within 7 days. But the workman did not submit any reply. Thereafter an Officer of the Bank Mr. S.S. Baishya, Lead District Manager was appointed as Enquiry Officer in the aforesaid Disciplinary Proceeding against the workman and the entire proceeding was held in the presence of the workman. The workman was also given opportunity to engage his defence representative or defence assistant but he failed to do so and ultimately on 13.05.2008 the Enquiry Officer submitted his enquiry report holding that the charge against the workman was proved. A copy of the enquiry report was submitted to the workman wherein he was asked to submit his response and in response the workman admitted the findings of the enquiry report and prayed for lesser punishment. Thereafter the Disciplinary Authority vide letter dated 04.07.2008 asked the workman to show-cause as to why he shall not be dismissed from service. The workman appeared before the Disciplinary Authority and though he admitted the misconduct, he requested not to impose the punishment of dismissal from service.
5. The workman submitted additional written statement against the written statement submitted by the management and stated that since he was illiterate he could not understand what the management was writing to him and what were the contents of the documents.
6. The management side also submitted further additional written statement wherein all the allegations of violation of principle of natural justice was denied and it was also stated that the workman refunded the misappropriated

amount by taking loan from his Provident Fund Account and the amount was deposited in the concerned Recurring Deposit Account.

7. The workman side examined only one witness i.e. the concerned workman Dhan Ali. The management side, although examined two witnesses but as management witnesses No.1 was not produced for cross-examination, his entire evidence-in-chief submitted through Affidavit stood expunged. The management however examined another witness Mr. Tufan Basak, who was Branch Manager of Bhella Branch of the UCO Bank of India at the time of his deposing before this Tribunal. Hence, actually there is one witness from each side in this matter. Both the witnesses were cross-examined by the rival parties. The reference made by the Appropriate Government was to determine whether the punishment of dismissal from service imposed upon the workman by the management was justified or not.

8. Both the parties argued the matter before this Tribunal. The workman side was represented by the Member, Executive Committee of UCO Bank Employees Association, North Eastern States Council and the management side was represented by a lawyer. It may be mentioned here that the workman side did not raise any objection against the engagement of a legal counsel by the management and the concerned representative/Office bearer of the Union to which the workman belonged, specifically stated that he has no objection in engagement of legal counsel for the management. Apart from oral submission both sides also submitted memorandum of written argument wherein the facts of the case were restated. The workman side mainly argued that since the workman was an illiterate person he could not understand what writing or admission statement was obtained from him by the management. It was also argued that as a Part Time Sweeper he was not authorized to receive any payment from any customer on behalf of the Bank and the entire allegation against him was untrue. It was also emphasized that the workman was not appropriately represented in the Disciplinary Proceeding and the entire process was defective and was in violation of principle of natural justice. It was further stated that though the workman filed an appeal on 01.09.2008 before the Appellate Authority against the order of dismissal, the said appeal was not disposed of by the concerned authority.

9. The management side in their argument also reiterated the facts and emphasized that workman himself admitted his guilt vide his letter dated 14.12.2007 addressed to the Branch Manager which was enough to prove his misconduct. It was also argued that after admission of his misconduct the workman took loan of Rs.12,500/- from his Provident Fund Account and made the payment of the said amount to the concerned Recurring Deposit Account of Santipur Mahila Samabay Samittee. It was further argued that the workman was given ample opportunities to defend himself but he did not engage any defence assistant nor did he submit any reply to the charge-sheet submitted against him. It was also pointed out that during his cross-examination in this case the workman categorically admitted that in paragraph-3 of his written appeal he submitted that unfortunate incident of non credit of money in the Recurring Deposit took place due to his ignorance but he had later on paid the same by taking loan from his Provident Fund Account.

10. In his evidence before this Tribunal the workman briefly narrated the nature of his duties in the Bank. He was working as a Part Time Sweeper at UCO Bank, Bhella Branch in the District of Barpeta since 01.01.1990 and was paid wages @ Rs.1800/- per month for two years. His duty was to sweep and clean the Bank premises. On 21.7.08 he was transferred to Mukalmua Branch as part time Sweeper and the last monthly wages paid to him was Rs.3600/-. He further deposed that while he was working at Bhella Branch, the Branch Manager raised an allegation against him that he took an amount of Rs.12,500/- from one depositor to deposit the same in the customer's Recurring Deposit Account but misappropriated the money. He further stated that thereafter the Branch Manager obtained his signature on a blank paper and realized the said amount of Rs.12,500/- from a loan which he was compelled to take from his Provident Fund account. He also stated that thereafter he was dismissed from service he had submitted an appeal against the dismissal but the Appeal has not been disposed of by the appropriate authority. Thereafter he raised the dispute before the RLC(C), Guwahati and when the matter could not be resolved on conciliation, on the basis of the report of the Conciliation Officer the appropriate Government made this reference to this Tribunal. The workman while deposing before this Tribunal exhibited Chapter-II of Manual of Instruction of UCO Bank regarding receipt, payment and system of cash (Exhibit-1). Copy of the charge sheet submitted to the workman was exhibited as Exhibit-2. Copy of the Disciplinary Proceeding in 14 pages was exhibited by the workman as Exhibit-3 and copy of the final order of dismissal passed by the Disciplinary Authority was exhibited as Exhibit-4 and copy of the appeal filed by the workman to the Appellate Authority and Zonal Manager, UCO Bank, Zonal Office, Guwahati was exhibited as Exhibit-5.

11. During his cross-examination he admitted that he did not submit any reply to the charge-sheet issued to him by the management. He also admitted that in para-3 of Exhibit-5 he himself had stated that an "unfortunate incident" of non credit of some money in a recurring deposit account took place due to his ignorance and he had, later, paid the same by availing Provident Fund loan.

12. Management witness No.2 briefly stated the facts alleged by the management in the charge-sheet against the workman and also stated that when the matter came to light on the basis of the complaint of the concerned customer the workman admitted his guilt before the Branch Manager in writing. He exhibited the written admission of the workman as Exhibit-A. The complaint received from the concerned customer i.e. Santipur Mahila Samabay Samittee for non-

deposit of 5 installments totaling Rs.12,500/- in their Recurring Deposit Account is Exhibit-C wherein it was stated that the customer sometimes used to give cash to the workman Dhan Ali for depositing the same to their Recurring Deposit Account. The management witness also exhibited another letter written to the Branch Manager by the customer as Exhibit-B wherein it was stated that on 14.12.2007 in front of the Office bearer, Santipur Mahila Samabay Samittee, Bhella, workman Dhan Ali admitted that 5 installments of the recurring Deposit account was given to him for depositing in the said account but he did not deposit the same. The prayer of the workman for availing loan from his Provident Fund Account to repay the money misappropriated by him was proved as Exhibit-D. The true copy of the Attendance Register of the Bank showing attendance of the workman on relevant pages was proved as Exhibit-F.

13. During the cross-examination, the management witnesses No.2 admitted that as a Part-Time workman he was not authorized to deal with the cash of the customer and that he was only a Part Time Sweeper in the Bank. The witness also admitted that there was no possibility on the part of a Sweeper to man the cash counter.

14. In the Disciplinary Proceeding against the workman the charge was that a customer of the Bank namely Santipur Mahila Samabay Samittee, Bhella, who had an Recurring Deposit Account in the Branch, gave on different dates, totaling of Rs.12,500/- to the workman to deposit in the R.D.Account. Exhibit-B which was proved by the management witness No.2 was a clear testimony to the aforesaid fact. Ext-B was duly proved from wherein it appeared that the workman in the presence of the office bearers of the aforesaid Santipur Mahila Samabay Samittee admitted that he had misappropriated the aforesaid amount by not depositing the same in the concerned R.D. Account. The main plea of the workman was that he was an illiterate person and that he was not authorized to receive any cash from any customer on behalf of the Bank. There is no doubt that the workman was a Part-Time Sweeper and hence he was indeed not authorized to receive any cash from the customer. Admittedly, the workman was not authorized to collect cash from customers. But in the instant matter the customer gave the money to the workman to deposit the same in the account. Such practice is prevalent in places. The customers often follow the practice of depositing money in their accounts through any staff of the bank who is known to them. The workman has also admitted the said fact as is clear from the Exhibit-A wherein he stated that 5 installments in the concerned Recurring Deposit Account was given to him by the customer and he instead of depositing the same in the Account spent the money towards his households expenses. In Exhibit-A the workman also stated that he was ready to accept any punishment which would be given to him by the Bank for the aforesaid act.

14. The plea of the workman as revealed from his claim statement and evidence were as under. Firstly, that he was not authorized to receive such cash and had also not received such cash; secondly, since he was illiterate he was only made to put his signature on his alleged admission (Exhibit-A); thirdly, the Disciplinary Proceeding was held in violation of principle of natural justice in as much as he was not allowed to engage any defence representative to defend him.

15. In regard to first plea, the question of authority of the workman to receive cash on behalf of bank was not relevant; what was relevant was whether he received such cash. In the instant case, joint reading of Exhibits-A, B, C, D and E goes to show that the workman actually received the money from the customer and did not deposit the same in the concerned account. From the evidence on record it was also clear that the workman made good the loss of the customer by taking a loan from his Provident Fund Account. All these go to show that he indeed received the money from the customer and did not deposit the same in the concerned Account and that when this matter was revealed he was charged by the management and he ultimately deposited the amount by taking loan from his P.F. Account. In the aforesaid circumstances the plea of the workman that he was not authorized to receive any cash from any customer on behalf of the Bank was not acceptable. From the evidence on record it was clear that the workman was given opportunity to engage a defence representative but he did not or could not manage to engage one. The fundamental principle in regard to the Disciplinary Proceeding is that the delinquent has to be given an opportunity to defend himself either by himself or by his engaged representative. It was clear from the evidence that the workman not only could not engage a defence representative, he even did not submit any response to the charge sheet. Hence, the non engagement of defence representative by the workman in the Disciplinary Proceeding, in the above circumstances, could not be held to be in violation of the basic principle of the conduct of the Disciplinary Proceeding. The plea that he was made to submit his written admission of the fact (Ext A) clearly appears to be not acceptable.

16. That apart, during cross-examination of the workman, he admitted that in the Appeal (Ext-5) preferred before the appellate authority of the bank, he prayed for reconsideration of his punishment of dismissal from service taking into account the condition of his family. On perusal of the Exhibit-5 it appeared that in column 3 it was stated that an unfortunate incident of non credit of some money in a Recurring Deposit Account took place due to the ignorance of the workman and that he paid the amount by availing Provident Fund loan. In Exhibit-5 the workman appealed before the Appellate Authority to review the punishment of dismissal. All these categorically show that the charge against the workman was proved. Considering the enquiry report, the disciplinary authority imposed the punishment of dismissal from service. Reference before this tribunal is to answer whether such dismissal from service was justified or not.

17. From the evidence on record, as discussed above, misappropriation of money of customer by the workman has been proved as well as admitted by the workman himself. Indeed he made good the loss of the customer after his deliberate act was discovered. He was held guilty in the departmental proceeding and the management dismissed him from his service. There was no doubt that the act of the workman was deliberate. Such an act is least expected from an employee of a bank.

18. In view of the above, it appeared to me that the punishment imposed by the management upon the workman was justified and proper. The reference is answered accordingly.

Send the Award to the Ministry as per procedure.

Given under my hand and seal of this Court on this 31<sup>st</sup> day of August, 2017 at Guwahati.

M. K. BHATTACHARJEE, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2017

**का.आ. 2324.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जवाहरलाल नेहरू पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 95/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.09.2017 को प्राप्त हुआ था।

[सं. एल-16014/02/2017-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 26th September, 2017

**S.O. 2324.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 95/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Jawaharlal Nehru Port Trust, and their workmen, received by the Central Government on 26.09.2017.

[No. L-16014/02/2017-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

**PRESENT :** M. V. DESHPANDE, Presiding Officer

**REFERENCE NO. CGIT-2/95 of 2014**

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF  
JAWAHARLAL NEHRU PORT TRUST**

The Chairman  
Jawaharlal Nehru Port Trust  
Navi Mumbai 400 707.

**AND**

**THEIR WORKMEN**

The General Secretary  
Nhava Sheva Bandar Kamgar Sanghatana (A)  
64, Shopping Centre, 1<sup>st</sup> floor  
JNPT Township  
Uran-400 707.

**APPEARANCES :**

**FOR THE EMPLOYER** : Ms. Deepika Agarwal, Representative

**FOR THE UNION / WORKMEN** : No appearance

Mumbai, dated the 14<sup>th</sup> July, 2017.

**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-16014/02/2014-IR (B-II), dated 10.10.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

*“Whether the Charter of Demands dated 21.12.2010 of the Nhava Sheva Bandar Kamgar Sanghatana (A) served on the management of Jawaharlal Nehru Port Trust for revision of wages and other service conditions of the contract workers of JNPT is legal, proper and justified? What relief the contract workers are entitled to ?”*

2. After receipt of the Reference, notices were served on both the parties. Matter was adjourned on several occasions for filing Statement of Claim by second party/ Union. Second party Union neither appeared before this Tribunal nor filed their Statement of Claim. Without Statement of claim, the Reference cannot be decided on merits and the same deserves to be dismissed. Hence, I pass the following order:

**ORDER**

Reference stands dismissed for want of prosecution.

Date: 14.07.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2017

**का.आ. 2325.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. मेरीडियन ट्रेडप्लेस प्रा. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 4/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.09.2017 को प्राप्त हुआ था।

[सं. एल-31011/06/2015-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 26th September, 2017

**S.O. 2325.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 4/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of M/s. Meridien Tradeplace Pvt. Ltd., and their workmen, received by the Central Government on 26.09.2017.

[No. L-31011/06/2015-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

**PRESENT :** M. V. DESHPANDE, Presiding Officer

**REFERENCE NO. CGIT-2/4 of 2016**

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF  
M/S. MERIDIEN TRADEPLACE PVT. LTD.**

The Director  
M/s. Meridien Tradeplace Pvt. Ltd.  
124, Kashiram Jamnadas Building  
5, P.D'mello Road  
Carnac Bunder, Mumbai 400 038.

**AND**

**THEIR WORKMEN**

The President  
Transport & Dock Workers' Union  
P.D'mello Bhavan  
P.D'mello Road, Carnac Bunder  
Mumbai 400 038.

**APPEARANCES :**

FOR THE EMPLOYER : Ms. Komal Deshmukh, Advocate  
 FOR THE UNION / WORKMEN : Mr. S.R. Yadav, Representative  
 Mumbai, dated the 3<sup>rd</sup> August, 2017

**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-31011/06/2015-IR (B-II), dated 6/13.01.2016 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

*“Whether the 43 point Charter of Demands dated 13.10.2014 (As per Exhibit A enclosed) raised by the Transport & Dock Workers Union on the management of M/s. Meridien Tradeplace Pvt. Ltd. on expiry of previous settlement as on 31.08.2014 and subsequently serving of Strike Notice dated 21.01.2015 proposing to go on indefinite strike from 6/2/2015 or any day thereafter in the establishment to press their demands and thereafter signing of a settlement by the management on 31.07.2015 with a section of workmen during the pendency of conciliation proceedings is just and proper? If so what relief the union and other workmen are entitled to ?”*

2. After receipt of the Reference, notices were served on both the parties. Matter was fixed for filing Statement of Claim by second party/ Union. Today second party Union filed application Ex-5 stating that the matter has been settled amicable between the parties on 17.11.2015. Therefore they prayed to dispose of the reference as settled. Orders were passed on Ex-1. Accordingly, I pass the following order:

**ORDER**

Reference stands disposed of as settled

Date: 03.08.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2017

**का.आ. 2326.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन मैरीटाइम यूनिवर्सिटी, मुम्बई कैम्पस एंड मर्चेंट मैरीन एजुकेशन एंड रिसर्च ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 55/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.09.2017 को प्राप्त हुआ था।

[सं. एल-31011/04/2015-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 26th September, 2017

**S.O. 2326.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Indian Maritime University, Mumbai Campus and Merchant Marine Education & Research Trust, and their workmen, received by the Central Government on 26.09.2017.

[No. L-31011/04/2015-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI**

**PRESENT : M. V. DESHPANDE, Presiding Officer**

**REFERENCE NO. CGIT-2/55 of 2015**

## EMPLOYERS IN RELATION TO THE MANAGEMENT OF

## (1) INDIAN MARITIME UNIVERSITY

The Director  
Indian Maritime University, Mumbai Campus  
Karave, Nerul  
Navi Mumbai 400 0706.

## (2) MERCHANT MARINE EDUCATION &amp; RESEARCH TRUST

The Chairman  
Merchant Marine Education & Research Trust  
Director General of Shipping  
Jahaz Bhavan, W.H. Marg  
Mumbai 400 001.

**AND**

## THEIR WORKMAN.

The General Secretary  
Bhartitya Kamgar Sena  
Prafullaben Society  
R.K. Vaidya Road, Dadar (W)  
Mumbai 400 028.

**APPEARANCES :**

FOR THE EMPLOYER NO.1 : Mr. M.B. Anchan, Advocate  
FOR THE EMPLOYER NO. 2 : Ms. Deepika Agarwal, Representative  
FOR THE /UNION WORKMEN : No appearance.

Mumbai, dated the 27<sup>th</sup> July, 2017

**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-31011/04/2015-IR (B-II), dated 02.11.2015 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

*“Whether the action of the management of M/s. Merchant Marine Education & Research Trust in not paying the terminal dues to the 22 workmen (as per list enclosed) either directly or through IMU while terminating their services vide notice dated 31.03.2009 w.e.f. 01.05.2009 is just and proper? If not, what relief the workmen concerned are entitled to ?”*

*Names as per list*

1. Santosh Thorat
2. Sitaram Jadhav
3. Dinkar Phalke
4. Ganpat Kothar
5. Arvind Waghmare
6. Manoj Mane
7. Venkat Dabhalkar

8. *Pravin Todkar*
9. *Madhav Das*
10. *A. Nagrathninin*
11. *Ashok Pawar*
12. *Anand Kumar*
13. *S.S. Sansare*
14. *Bhavna Rathod*
15. *Rajeshree Pedamkar*
16. *Vicky Kudluk*
17. *Prakash D'Souza*
18. *Mithun Das*
19. *Nandkishor Gupta*
20. *Vilas Limaye*
21. *V.S. Choudhan*
22. *Ram Dighe*

2. After receipt of the Reference, notices were served on both the parties. Mr. I.A. Mulla appeared on behalf of the Second party/union on 25.04.2017 but did not file Statement of claim. Matter was adjourned on several occasions for filing Statement of Claim by second party/ Union. Without Statement of claim, the Reference cannot be decided on merits and the same deserves to be dismissed. Hence, I pass the following order:

#### ORDER

Reference stands dismissed for want of prosecution.

Date: 27.07.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2017

**का.आ. 2327.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ सं. 90/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.09.2017 को प्राप्त हुआ था।

[सं. एल-39025/01/2010-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 26th September, 2017

**S.O. 2327.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 90/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial Dispute between the management of UCO Bank and their workmen, received by the Central Government on 26.09.2017.

[No. L-39025/01/2010-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE****IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1, KARKARDOOMA COURT COMPLEX, DELHI****ID. NO. 90/2014**

Shri Sunder Pal S/o Shri Ramesh Chand, through

Shri Vijay Kumar,  
Aggarwal Bhawan, GT Road,  
Tiz Hazari

**Presently at**

Chamber No.B-83, B.G.S. Block,  
Tis Hazari Courts,  
Delhi

...Workman

**Versus**

1. The General Manager,  
UCO Bank,  
5 Parliament Street,  
New Delhi
2. The Branch Manager,  
UCO Bank,  
Shahdara Branch,  
Asha Ram Road,  
Delhi
3. The Chairman and Managing Director,  
UCO Bank,  
Head Office,  
3-4 DD Block, Sector, Salt Lake  
Kolkata – 700 064

...Management

**AWARD**

This claim petition has been filed under section 2-A of the Industrial Disputes Act, 1947 (in short the Act) by Shri Sunder Pal, (in short the claimant) with the averments that he was appointed as a peon with effect from 28.04.2004 by the management and was treated as a daily rated/muster roll worker. He was on fixed wages which was revised from time to time under the Minimum Wages Act while his counterparts doing identical work and work of the same value were being treated as regular employees and were being paid salary in proper pay scale alongwith allowances. They were enjoying facilities like uniform, casual leaves, Government/festival/restricted holidays etc. which were completely denied to the claimant. The claimant has unblemished and uninterrupted record of service to his credit.

2. It is the case of the claimant that his services have been terminated illegally and in a malafide manner on 15.09.2012. No notice was served on the claimant prior to his termination. Action of the management is completely in violation of provisions of Section 25-F, G and H of the Act. Moreover, the claimant has completed more than 240 days before his illegal termination. As such, he could not be thrown out of the job in this manner. The claimant raised an industrial dispute as he has served a demand notice dated 11.02.2013 on the management, which was duly received by the management but no reply to the same was given. Conciliation Officer has issued certificate dated 04.07.2014 so as to entitle the claimant to file claim under Section 2-A of the Act. Claimant has prayed that he be reinstated with continuity of service and full back wages alongwith other consequential benefits, including the cost of litigation.

3. Claim was contested by the management who filed reply thereto by taking preliminary objections that the claim is liable to be dismissed at the threshold itself as there is no cause of action whatsoever in favour of the claimant. On merits, management has denied most of the material averments. It is denied that services of the claimant were terminated on 15.09.2013. However, it is admitted that the claimant had raised an industrial dispute before the Conciliation Officer and conciliation proceedings ended in failure as is evident from certificate dated 14.07.2014. It is also denied that the claimant was appointed as peon on 24.04.2004 nor he was treated as a daily treated/muster roll worker.

4. Claimant filed rejoinder to the reply filed by the management wherein the claimant reasserted the stand taken in the statement of claim and denied the material averments contained in the reply of the management.
5. Based on these facts, this Tribunal vide order dated 02.11.2015 framed the following issue:
  - Whether termination of the workman herein is in violation of provisions of Section 25-F, G and H of the Industrial Disputes Act, 1947?
6. Claimant in support of his case examined himself as WW1 and tendered in evidence his affidavit Ex.WW1/A as well as documents Ex.WW1/1 to Ex.WW1/9. Management in order to rebut the case of the claimant examined Shri Basant Lal as MW1, whose affidavit is Ex.MW1/A. However, he has not relied on any document.
7. I have heard Shri Vinay Kumar, A/R for the claimant and Shri Sarfaraz Khan, A/R for the management.
8. It is clear from the pleadings of the parties that the claimant herein has come with the specific plea that he was appointed as a peon on 28.04.2004 and he was treated as a daily rated/muster roll worker by the management and his services was terminated on 15.09.2012 by the management in violation of provisions of Section 25-F, G and H of the Act, whereas the management has controverted the pleadings of the claimant and alleged that services of the claimant herein was never terminated by the management on 19.09.2012 nor he was engaged as a daily rated/muster roll worker by the management at any time. Claimant has also filed copy of statement of claim filed before the Assistant Labour Commissioner Ex.WW1/3 which is almost on the same lines as the claim filed before this Tribunal. Similarly, management has filed copy of the reply filed to the statement of claim before the Assistant Labour Commissioner, which is also on similar lines as the reply filed before this Tribunal.
9. During the course of arguments, learned A/R for the claimant invited the attention of the Tribunal to the statement of Shri Basant Lal, MW1 whose affidavit is Ex.MW1/A. Though in the affidavit it is stated that the claimant was never appointed as a peon on 24.04.2004 yet in his cross examination, while appearing as MW1, he has stated that he is making statement on the basis of official record. He has further admitted Ex.WW1/6 to Ex.WW1/9 are issued by the management. He has further admitted that wages of the workers who are casually engaged is made from 'working expenses' and 'miscellaneous expenses'. No record of such daily workers is maintained in the office. Bank has to take a decision in this regard at their own level. He further admitted that bonus has been paid to the claimant vide Ex.WW1/9 and such bonus is paid to part-time and regular employees. He has made a very vital admission that the claimant herein was in the employment of the management since 28.04.2004 as per Ex.WW1/7 till 15.09.2012. It is further clear from perusal of documents Ex.WW1/6 to Ex.WW1/9 that wages were being paid to the claimant from the 'working expenses' and 'miscellaneous expenses'.
10. It is pertinent to refer here to the documents Ex.WW1/7, which is a letter addressed by Senior Manager to the Personnel Services Department of the Zonal Office of the management, which reads as under:

‘This is to inform your good self again regarding Mr. Sunder Pal S/o Shri Ramesh Chand, R/o Village and Post Office Sarawani (Distt. Ghaziabad) has been working in this branch since 28.04.2004. We are satisfied with his dedication towards the work and work knowledge of our branch as Peon.

We recommend his absorption as a regular employee in our Bank as and when vacancies arise in future in subordinate cadre.’
11. A bare perusal of the above letter clearly shows that the Senior Manager of the management has categorically admitted that the claimant Shri Sunder Pal has been working in the branch of the Bank from 28.04.2004. Management was also satisfied with the working of the claimant. Claimant has also tendered in evidence vouchers Ex.WW1/8 (colly) which shows that payments were made to the claimant from October 2008 onwards till August 2012. Thus, there is no merit in the contention of the management that the claimant herein was never engaged as a daily rated worker or on muster roll by the management. Plea of the management in the reply is totally against evidence on record. Ex.WW1/10 is the statement of account of the claimant and perusal of the same shows that he has been paid salary by the bank. Statement of the claimant is in consonance with the averments contained in the statement of claim as he has clearly stated that he has been working since 28.04.2004 and was not issued any appointment letter by the management. His services were orally terminated. He has further deposed that one Shri Dharmender, sweeper, was made permanent by the management and he is unemployed since the date of his termination and is living in his village. He has also clearly denied the suggestion that he has not worked for 240 days in a calendar year. In view of the admission contained in letter Ex.WW1/7, it is clear that the claimant has been continuously working since April 2004 and in view of this admission, he has discharged the onus that he was in the employment of the bank and other evidence on record is also clearly suggesting of the fact that the claimant has continuously worked since April 2004 till his termination in September 2012.

12. Contention raised on behalf of the management that such casual or daily rated workers do not come under the definition of 'workman' and as such no seniority list is required to be maintained for such type of workmen is without any merit and is liable to be rejected in view of the emphatic pronouncement made by the Hon'ble Apex Court in the case of Devender Singh Vs. MC Sanaur (AIR (2001) SCC 2532) wherein while interpreting provisions of Section 2(s) of the Act, it was held as under:

'The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act.

The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

15. Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of 'workman'.

13. Since in the case on hand, admittedly no notice in writing was served upon the workman before termination of his job, nor the workman was given one month salary/wages in lieu of such notice, as such, there is clear violation of mandatory provision of Section 25-F of the Act, which provides that termination of a workman who has completed 240 days in a calendar year is illegal, null and void in case the workman is not given one month notice or salary in lieu of such notice to the workman before order of his retrenchment or termination. Resultantly, it is held that termination of services of the workman herein is illegal, null & void and against the provisions of section 25-F of the Act.

14. It is also appropriate to refer to rule 77 of the Industrial Disputes (Central) Rules, 1957 that an employer shall prepare list of workers in a particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment. To my mind, preparation of seniority list of even casual or daily rated workmen is necessary so as to meet the requirement of Section 25-G of the Act, which primarily deals with the principle of 'Last come first go'. In order to attract provisions of 25-G of the Act, it is not even necessary that the workman has worked for a period of 240 days during the previous 12 calendar months preceding his termination of service. It is sufficient for him to plead and prove that while effecting retrenchment, employer violated the rule of 'Last come first go' without any tangible reason. Net result of the above discussion is that termination of services of the claimant herein orally by the management in September 2012 is in complete violation of provisions of Section 25-F of the Act inasmuch as concededly management has not served any prior notice upon the claimant nor one month's notice was given to the claimant in lieu thereof at the time of his retrenchment. Claimant was admittedly not given any kind of retrenchment compensation as required under Section 25-F of the Act. It is now well settled position under the law that provisions of section 25-F of the Act are mandatory in nature and violation of such provisions would render the action of the management to be totally illegal, null and void under the law. I find support to this view of mine from the case of Ajay Pal Singh Vs. Haryana Warehousing Corporation (2015) SCC 320. Similar view has been taken by Hon'ble Apex Court in a number of cases and I need not burden this file with the same.

15. Having said so, now the residual question is whether the claimant is entitled for reinstatement with back wages or whether he is simply to be given reasonable compensation as urged on behalf of the management. Question as to whether the workman whose services have been dispensed with was terminated/retrenched in contravention of provisions of Section 25—F of the Act is no longer res integra as this point has been adjudicated by the Hon'ble Apex Court as well as various Hon'ble High Courts in a number of cases. In the case of Deepali Gundu Surwase vs. Kranti Junior Adyapak Mahavidyalaya (D.Ed) and others (2013 Lab.I.C. 4249), Hon'ble Apex Court held as under:

'Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence

of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.'

16. No doubt, Hon'ble Apex Court in similar cases has observed that there are number of factors which are to be taken into consideration while considering question of full back wages or only payment of retrenchment compensation or reasonable compensation. Such factors which could be culled out from the various judgements are the length of service, whether claimant was doing work of regular or perennial in nature or was just employed for a specific work which is of temporary or seasonal nature, whether there is no delay in making reference or approaching this Tribunal by the claimant, whether the workman was working against sanctioned post or work is still subsisting so as to consider the question of reemployment of the workmen.

17. As discussed above, duty of the claimant herein as a peon cannot be said to be seasonal or temporary in nature. Moreover, there is also evidence on record that one Shri Dharmender is still working with the management whereas services of the claimant has been terminated, admittedly without any one months' notice/pay in lieu thereof or payment of retrenchment compensation. To my mind, in such a situation, when there is no delay on the part of the claimant in approaching this Tribunal at the earliest, relief of reinstatement with full back wages appears to be just and reasonable and the same is, hereby, allowed.

18. As a sequel to my above discussion made herein above, it is held that termination of services of the claimant by the management is totally illegal and in complete violation of section 25-F, G and H of the Act. As such, the management is directed to reinstate Shri Sunder Pal, the claimant herein, with full back wages. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : September 15, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2017

**का.आ. 2328.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ सं. 89/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.09.2017 को प्राप्त हुआ था।

[सं. एल-39025/01/2010-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 26th September, 2017

**S.O. 2328.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 89/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial Dispute between the management of UCO Bank and their workmen, received by the Central Government on 26.09.2017.

[No. L-39025/01/2010-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1, KARKARDOOMA COURT COMPLEX, DELHI**

**ID. NO. 89/2014**

Shri Jagroshan S/o Shri Ram Pal, through

Shri Vijay Kumar,  
Chamber No.B-83, B.G.S. Block,  
Tis Hazari Courts,  
Delhi

...Workman

**Versus**

1. The General Manager,  
UCO Bank,  
5 Parliament Street,  
New Delhi
2. The Branch Manager,  
UCO Bank,  
Shahdara Branch,  
Asha Ram Road,  
Delhi
3. The Chairman and Managing Director,  
UCO Bank,  
Head Office,  
3-4 DD Block, Sector, Salt Lake  
Kolkata – 700 064

...Management

**AWARD**

This claim petition has been filed under section 2-A of the Industrial Disputes Act, 1947 (in short the Act) by Shri Jagroshan, (in short the claimant) with the averments that he was appointed as a sweeper with effect from 18.01.2010 by the management and was treated as a daily rated/muster roll worker. He was on fixed wages which was revised from time to time under the Minimum Wages Act while his counterparts doing identical work and work of the same value were being treated as regular employees and were being paid salary in proper pay scale alongwith allowances. They were enjoying facilities like uniform casual leaves, Government/festival/restricted holidays etc. which were completely denied to the claimant. The claimant has unblemished and uninterrupted record of service to his credit.

2. It is the case of the claimant that his services have been terminated illegally and in a malafide manner on 15.04.2013. No notice was served on the claimant prior to his termination. Action of the management is completely in violation of provisions of Section 25-F, G and H of the Act. Moreover, the claimant has completed more than 240 days before his illegal termination. As such, he could not be thrown out of the job in this manner. The claimant raised an industrial dispute as he has served a demand notice dated 02.05.2013 on the management, which was duly received by the management but no reply to the same was given. Conciliation Officer has issued certificate dated 09.07.2014 so as to entitle the claimant to file claim under Section 2-A of the Act. Claimant has prayed that he be reinstated with continuity of service and full back wages alongwith other consequential benefits, including the cost of litigation.

3. Claim was contested by the management who filed reply thereto by taking preliminary objections that the claim is liable to be dismissed at the threshold as there is no cause of action whatsoever in favour of the claimant. On merits, management has denied most of the material averments. It is denied that services of the claimant were terminated on 15.04.2013. However, it is admitted that the claimant has raised an industrial dispute before the Conciliation Officer and conciliation proceedings ended in failure as is evident from certificate dated 14.07.2014. It is also denied that the claimant was appointed as peon on 12.09.2004 nor he was treated as a daily treated/muster roll worker.

4. Claimant filed rejoinder to the reply filed by the management wherein the claimant reasserted the stand taken in the statement of claim and denied the material averments contained in the reply of the management.

5. Based on these facts, this Tribunal vide order dated 02.11.2015 framed the following issue:

- Whether termination of the workman herein is in violation of provisions of Section 25-F, G and H of the Industrial Disputes Act, 1947?

6. Claimant in support of his case examined himself as WW1 and tendered in evidence his affidavit Ex.WW1/A as well as documents Ex.WW1/1 to Ex.WW1/12. Management in order to rebut the case of the claimant examined Shri S.N. Meena as MW1, whose affidavit is Ex.MW1/A. However, he has not relied on any document.

7. I have heard Shri Vinay Kumar, A/R for the claimant and Shri Sarfaraz Khan, A/R for the management.

8. It is clear from the pleadings of the parties that the claimant herein has come with the specific plea that he was appointed as a sweeper on 18.01.2010 and he was treated as a daily rated/muster roll worker by the management and his services was terminated on 15.04.2013 by the management in violation of provisions of Section 25-F, G and H of the Act, whereas the management has controverted the pleadings of the claimant and alleged that services of the claimant herein was never terminated by the management on 15.04.2013 nor he was engaged as a daily rated/muster roll worker by the management at any time. Claimant has also filed copy of statement of claim filed before the

Assistant Labour Commissioner Ex.WW1/9 which is almost on the same lines as the claim filed before this Tribunal. Similarly, management has filed copy of the reply Ex.WW1/10 filed to the statement of claim before the Assistant Labour Commissioner, which is also on similar lines as the reply filed before this Tribunal.

9. During the course of arguments, learned A/R for the claimant invited the attention of the Tribunal to the statement of Shri S.N. Meena, MW1 whose affidavit is Ex.MW1/A. Though in the affidavit it is stated that the claimant was never appointed as a sweeper on 18.01.2010 yet in his cross while appearing as MW1 he has stated that he is making statement on the basis of official record. He has further admitted Ex.WW1/3, Ex.WW1/4 and Ex.WW1/6 are issued by the management. Appointment of regular/temporary employees is decided by Zonal Office/competent authority. However, in case of emergency when services of sweeper is required, services of local sweeper for a day is taken on payment from working expenses of the bank. He has made a very vital admission that the claimant herein was in the employment of the management from 15.04.2012 to 15.04.2013. It is further clear from perusal of documents Ex.WW1/12 that wages were being paid to the claimant from the 'working expenses'.

10. It is pertinent to refer here to the document Ex.WW1/4, which is a letter addressed by Senior Manager to the HRM Department of the Zonal Office of the management, forwarding the application of the claimant who was sweeping the branch premises on daily wages since January 2010 and requesting for regularizing service of the claimant on permanent basis.

11. A bare perusal of the above letter clearly shows that the Senior Manager of the management has categorically admitted that the claimant Shri Jag Roshan has been working in the branch of the Bank from January 2010. Management was also satisfied with the working of the claimant. Claimant has also tendered in evidence vouchers Ex.WW1/3 (colly) which shows that payments were made to the claimant from January 2010 onwards till May 2012. Thus, there is no merit in the contention of the management that the claimant herein was never engaged as a daily rated worker or on muster roll by the management. Plea of the management in the reply is totally against evidence on record. Statement of the claimant is in consonance with the averments contained in the statement of claim as he has clearly stated that he has been working since 18.01.2010 and was not issued any appointment letter by the management. His services were orally terminated. He has further deposed that he is unemployed since the date of his termination. He has also clearly denied the suggestion that he has not worked for 240 days in a calendar year. In view of the admission contained in letter Ex.WW1/4, it is clear that the claimant has been continuously working since 18.01.2010 and in view of this admission, he has discharged the onus that he was in the employment of the bank and other evidence on record is also clearly suggesting of the fact that the claimant has continuously worked since January 2010 till his termination on 15.04.2013.

12. Contention raised on behalf of the management that such casual or daily rated workers do not come under the definition of 'workman' and as such no seniority list is required to be maintained for such type of workmen is without any merit and is liable to be rejected in view of the emphatic pronouncement made by the Hon'ble Apex Court in the case of Devender Singh Vs. MC Sanaur (AIR (2001) SCC 2532) wherein while interpreting provisions of Section 2(s) of the Act, it was held as under:

'The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of [Section 2\(s\)](#) of the Act.

The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of [Section 2\(s\)](#) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

15. Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of [Section 2\(s\)](#) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of 'workman'.

13. Since in the case on hand, admittedly no notice in writing was served upon the workman before termination of his job, nor the workman was given one month salary/wages in lieu of such notice, as such, there is clear violation of mandatory provision of Section 25-F of the Act, which provides that termination of a workman who has completed 240 days in a calendar year is illegal, null and void in case the workman is not given one month notice or salary in lieu of such notice to the workman before order of his retrenchment or termination. Resultantly, it is held that termination of services of the workman herein is illegal, null & void and against the provisions of section 25-F of the Act.

14. It is also appropriate to refer to rule 77 of the Industrial Disputes (Central) Rules, 1957 that an employer shall prepare list of workers in a particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment. To my mind, preparation of seniority list of even casual or daily rated workmen is necessary so as to meet the requirement of Section 25-G of the Act, which primarily deals with the principle of 'Last come first go'. In order to attract provisions of 25-G of the Act, it is not even necessary that the workman has worked for a period of 240 days during the previous 12 calendar months preceding his termination of service. It is sufficient for him to plead and prove that while effecting retrenchment, employer violated the rule of 'Last come first go' without any tangible reason. Net result of the above discussion is that termination of services of the claimant herein orally by the management in September 2012 is in complete violation of provisions of Section 25-F of the Act inasmuch as concededly management has not served any prior notice upon the claimant nor one months' notice was given to the claimant in lieu thereof at the time of his retrenchment. Claimant was admittedly not given any kind of retrenchment compensation as required under Section 25-F of the Act. It is now well settled position under the law that provisions of section 25-F of the Act are mandatory in nature and violation of such provisions would render the action of the management to be totally illegal, null and void under the law. I find support to this view of mine from the case of Ajay Pal Singh Vs. Haryana Warehousing Corporation (2015) SCC 320. Similar view has been taken by Hon'ble Apex Court in a number of cases and I need not burden this file with the same.

15. Having said so, now the residual question is whether the claimant is entitled for reinstatement with back wages or whether he is simply to be given reasonable compensation as urged on behalf of the management. Question as to whether the workman whose services have been dispensed with was terminated/retrenched in contravention of provisions of Section 25—F of the Act is no longer res integra as this point has been adjudicated by the Hon'ble Apex Court as well as various Hon'ble High Courts in a number of cases. In the case of Deepali Gundu Surwase vs. Kranti Junior Adyapak Mahavidyalaya (D.Ed) and others (2013 Lab.I.C. 4249), Hon'ble Apex Court held as under:

'Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.'

16. No doubt, Hon'ble Apex Court in similar cases has observed that there are number of factors which are to be taken into consideration while considering question of full back wages or only payment of retrenchment compensation or reasonable compensation. Such factors which could be culled out from the various judgements are the length of service, whether claimant was doing work of regular or perennial in nature or was just employed for a specific work which is of temporary or seasonal nature, whether there is no delay in making reference or approaching this Tribunal by the claimant, whether the workman was working against sanctioned post or work is still subsisting so as to consider the question of reemployment of the workmen.

17. As discussed above, duty of the claimant herein as a peon cannot be said to be seasonal or temporary in nature. Moreover, there is also evidence on record that one Shri Dharmender is still working with the management whereas services of the claimant has been terminated, admittedly without any one months' notice/pay in lieu thereof or payment of retrenchment compensation. To my mind, in such a situation, when there is no delay on the part of the claimant in approaching this Tribunal at the earliest, relief of reinstatement with full back wages appears to be just and reasonable and the same is, hereby, allowed.

18. As a sequel to my above discussion made herein above, it is held that termination of services of the claimant by the management is totally illegal and in complete violation of section 25-F, G and H of the Act. As such, the management is directed to reinstate Shri Jagroshan, the claimant herein, with full back wages. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : September 15, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2017

**का.आ. 2329.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार विभाग, खानपुर, अहमदाबाद, गुजरात व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 329/2004, 330/2004, 331/2004, 332/2004, 334/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.09.2017 को प्राप्त हुआ था।

[सं. एल-40012/277/2000-आईआर (डीयू),  
सं. एल-40012/276/2000-आईआर (डीयू),  
सं. एल-40012/278/2000-आईआर (डीयू),  
सं. एल-40012/275/2000-आईआर (डीयू),  
सं. एल-40012/273/2000-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 27th September, 2017

**S.O. 2329.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGITA No. 329/2004, 330/2004, 331/2004, 332/2004, 334/2004,) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, Telecom Department, Khanpur, Ahmedabad, Gujarat & others and their workman, which were received by the Central Government on 21.09.2017.

[No. L-40012/277/2000-IR (DU),  
No. L-40012/276/2000-IR (DU),  
No. L-40012/278/2000-IR (DU),  
No. L-40012/275/2000-IR (DU),  
No. L-40012/273/2000-IR (DU)]  
RAJENDRA JOSHI, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 07<sup>th</sup> September, 2017

**Reference: (CGITA) No. 329/2004**

1. The Chief General Manager,  
Telecom Deptt., Khanpur,  
Ahmedabad (Gujarat) – 380001
2. The General Manager,  
Telecom District,  
Nadiad (Gujarat) – 387001
3. The Sub-Divisional Officer (T),  
Telephone Exchange, Cambay,  
Kheda (Gujarat) – 387411

...First Party

V/s.

The Org. Secretary,  
Association of Railway and Post Employees,  
15, Shashi Apartments, Opp. Anjali Cinema, Vasna Road,  
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri N.K. Trivedi

For the Second Party : Shri R.C. Pathak

### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/277/2000-IR(DU) dated 29.08.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

### SCHEDULE

“Whether the action of the management of Telecom Deptt. in terminating the services of Shri Radheyshyam Loknath Singh w.e.f. 01.12.1993 is fair and just? If not, to what relief the workman is entitled?”

1. The reference dates back to 29.08.2000. The second party submitted the statement of claim Ex. 8 on 19.06.2002 and the first party submitted the written statement Ex. 12 on 07.05.2003. The second party also submitted the documents vide list Ex. 19 on 29.03.2017. Since submitting the written statement by the first party, the second party refrained to lead evidence. The advocate for the second party Shri Chintan Goyal is present today on 07.09.2017. When he was asked to lead evidence, he told the tribunal that he is trying to contact the workman. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference, in the absence of the evidence of the second party, is disposed of with the observation as under: “the action of the management of Telecom Deptt. in terminating the services of Shri Radheyshyam Loknath Singh w.e.f. 01.12.1993 is fair and just.”

P. K. CHATURVEDI, Presiding Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 07<sup>th</sup> September, 2017

#### Reference: (CGITA) No. 330/2004

1. The Chief General Manager,  
Telecom Deptt., Khanpur,  
Ahmedabad (Gujarat) – 380001
2. The General Manager,  
Telecom District,  
Nadiad (Gujarat) – 387001
3. The Sub-Divisional Officer (T),  
Telephone Exchange, Cambay,  
Kheda (Gujarat) – 387411

...First Party

V/s.

The Org. Secretary,  
Association of Railway and Post Employees,  
15, Shashi Apartments, Opp. Anjali Cinema, Vasna Road,  
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri N.K. Trivedi

For the Second Party : Shri R.C. Pathak

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/276/2000-IR(DU) dated 29.08.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of the management of Telecom Deptt. in terminating the services of Shri Udaykumar Shivnath Ram w.e.f. 01.10.1994 is fair and just? If not, to what relief the workman is entitled?”

1. The reference dates back to 29.08.2000. The second party submitted the statement of claim Ex. 7 on 19.06.2002 and the first party submitted the written statement Ex. 11 on 07.05.2003. The second party also submitted the documents vide list Ex. 19 on 29.03.2017. Since submitting the written statement by the first party, the second party refrained to lead evidence. The advocate for the second party Shri Chintan Goyal is present today on 07.09.2017. When he was asked to lead evidence, he told the tribunal that he is trying to contact the workman. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference, in the absence of the evidence of the second party, is disposed of with the observation as under: “the action of the management of Telecom Deptt. in terminating the services of Shri Udaykumar Shivnath Ram w.e.f. 01.10.1994 is fair and just.”

P. K. CHATURVEDI, Presiding Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD**

**Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 07<sup>th</sup> September, 2017

**Reference: (CGITA) No. 331/2004**

1. The Chief General Manager,  
Telecom Deptt., Khanpur,  
Ahmedabad (Gujarat) – 380001
2. The General Manager,  
Telecom District,  
Nadiad (Gujarat) – 387001
3. The Sub-Divisional Officer (T),  
Telephone Exchange, Cambay,  
Kheda (Gujarat) – 387411

...First Party

**V/s.**

The Org. Secretary,  
Association of Railway and Post Employees,  
15, Shashi Apartments, Opp. Anjali Cinema, Vasna Road,  
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri N.K. Trivedi

For the Second Party : Shri R.C. Pathak

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/278/2000-IR(DU) dated 29.08.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of the management of Telecom Deptt. in terminating the services of Shri Kripanand Premchand Manjhi w.e.f. 01.10.1994 is fair and just? If not, to what relief the workman is entitled?”

1. The reference dates back to 29.08.2000. The second party submitted the statement of claim Ex. 7 on 19.06.2002 and the first party submitted the written statement Ex. 11 on 07.05.2003. The second party also submitted the documents vide list Ex. 19 on 29.03.2017. Since submitting the written statement by the first party, the second party refrained to lead evidence. The advocate for the second party Shri Chintan Goyal is present today on 07.09.2017. When he was asked to lead evidence, he told the tribunal that he is trying to contact the workman. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference, in the absence of the evidence of the second party, is disposed of with the observation as under: “the action of the management of Telecom Deptt. in terminating the services of Shri Kripanand Premchand Manjhi w.e.f. 01.10.1994 is fair and just.”

P. K. CHATURVEDI, Presiding Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD**

**Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 07<sup>th</sup> September, 2017

**Reference: (CGITA) No. 332/2004**

1. The Chief General Manager,  
Telecom Deptt., Khanpur,  
Ahmedabad (Gujarat) – 380001
2. The General Manager,  
Telecom District,  
Nadiad (Gujarat) – 387001
3. The Sub-Divisional Officer (T),  
Telephone Exchange, Cambay,  
Kheda (Gujarat) – 387411

...First Party

**V/s.**

The Org. Secretary,  
Association of Railway and Post Employees,  
15, Shashi Apartments, Opp. Anjali Cinema, Vasna Road,  
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri N.K. Trivedi

For the Second Party : Shri R.C. Pathak

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/275/2000-IR(DU) dated 29.08.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of the management of Telecom Deptt. in terminating the services of Shri Manubhai Sardarsinh Patel w.e.f. 01.10.1994 is fair and just? If not, to what relief the workman is entitled?”

1. The reference dates back to 29.08.2000. The second party submitted the statement of claim Ex. 7 on 19.06.2002 and the first party submitted the written statement Ex. 11 on 07.05.2003. The second party also submitted the documents vide list Ex. 19 on 29.03.2017. Since submitting the written statement by the first party, the second party

refrained to lead evidence. The advocate for the second party Shri Chintan Goyal is present today on 07.09.2017. When he was asked to lead evidence, he told the tribunal that he is trying to contact the workman. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference, in the absence of the evidence of the second party, is disposed of with the observation as under: “the action of the management of Telecom Deptt. in terminating the services of Shri Manubhai Sardarsinh Patel w.e.f. 01.10.1994 is fair and just.”

P. K. CHATURVEDI, Presiding Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 07<sup>th</sup> September, 2017

##### Reference: (CGITA) No. 334/2004

1. The Chief General Manager,  
Telecom Deptt., Khanpur,  
Ahmedabad (Gujarat) – 380001
2. The General Manager,  
Telecom District,  
Nadiad (Gujarat) – 387001
3. The Sub-Divisional Officer (T),  
Telephone Exchange, Cambay,  
Kheda (Gujarat) – 387411

...First Party

##### V/s.

The Org. Secretary,  
Association of Railway and Post Employees,  
15, Shashi Apartments, Opp. Anjali Cinema, Vasna Road,  
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri N.K. Trivedi

For the Second Party : Shri R.C. Pathak

### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/273/2000-IR(DU) dated 29.08.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

### SCHEDULE

“Whether the action of the management of Telecom Deptt. in terminating the services of Shri Ansari Mohammed Samin Ishaque w.e.f. 01.10.1994 is fair and just? If not, to what relief the workman is entitled?”

1. The reference dates back to 29.08.2000. The second party submitted the statement of claim Ex. 7 on 19.06.2002 and the first party submitted the written statement Ex. 11 on 07.05.2003. The second party also submitted the documents vide list Ex. 19 on 29.03.2017. Since submitting the written statement by the first party, the second party refrained to lead evidence. The advocate for the second party Shri Chintan Goyal is present today on 07.09.2017. When he was asked to lead evidence, he told the tribunal that he is trying to contact the workman. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference, in the absence of the evidence of the second party, is disposed of with the observation as under: “the action of the management of Telecom Deptt. in terminating the services of Shri Ansari Mohammed Samin Ishaque w.e.f. 01.10.1994 is fair and just.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2017

**का.आ. 2330.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, श्री रंगवियाल जीएस और डब्ल्यू मिल्स, कोयंबटूर एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 61/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.03.2017 को प्राप्त हुआ था।

[सं. एल-42012/88/2015-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 27th September, 2017

**S.O. 2330.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 61/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Sri Rangavilas G.S. & W. Mills, Coimbatore and their workman, which was received by the Central Government on 15.03.2017.

[No. L-42012/88/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 8<sup>th</sup> March, 2017

**Present :** K.P. PRASANNA KUMARI, Presiding Officer

#### Industrial Dispute No. 61/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Sri Rangavilas G.S. & W. Mills and their workman.)

#### **BETWEEN :**

Smt. V. Dhanabagyam : 1<sup>st</sup> Party/Petitioner

#### **AND**

The General Manager : 2<sup>nd</sup> Party/Respondent  
Sri Rangavilas G.S. & W. Mills  
333, Avanashi Road, Peelamedu PO  
Coimbatore-641004

#### **Appearance :**

For the 1<sup>st</sup> Party/Petitioner : M/s V. Ajaoy Khose, Advocates

For the 2<sup>nd</sup> Party/Respondent : M/s T.S. Gopalan & Co., Advocates

#### **AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-42012/88/2015-IR (DU) dated 11.05.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

*“Whether the denial of employment to Smt. V. Dhanabagyam at Sri Rangavilas G S & W Mills, Coimbatore is legal and justified? If not, to what relief the petitioner is entitled?”*

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 61/2015 and issued notices to both sides. Both sides have entered appearance through their counsel and filed their Claim and Counter Statement respectively. The petitioner has filed rejoinder in answer to the Counter Statement.

3. The petitioner has filed Claim Statement contending as below:

Sri Rangavilas Ginning, Spinning and Weaving Mills of which the Respondent is the General Manager is a unit of the National Textile Corporation (NTC) which is a Government of India Undertaking. The Corporation has 3 mills in and around Coimbatore including Rangavilas Mills. The petitioner joined the service of the Mill as a temporary worker on 03.09.2009 in the Spinning Department. She was paid salary once in a month on daily rated basis. Contribution towards Provident Fund and ESI were deducted from her salary every month. She was continuously employed in the Mill without any break. She had completed more than 480 days of service within 24 calendar months, by September, 2011. The Respondent put up a notice in the notice board of the Mill on 11.09.2012 unilaterally stating that 56 workers including the petitioner were transferred to two other mills owned by NTC. This was issued on the ground that all of them have been rendered surplus because of the revised workload settlement reached under Section-12(3) of the ID Act. The petitioner or others were not issued with any individual orders of transfer. The names of the petitioner and other workers continued to remain in the muster roll of the Rangavilas mill. However, all the workers were directed to join the other mills. The petitioner is having a male child aged about 6 years who is visually challenged. Cambodia Mills to which the petitioner was transferred is situated 20 kms. away from her residence. She had to take three buses to reach the said mill. The petitioner requested the Respondent to provide her employment in Rangavilas Mill itself. Rather than considering the request the Respondent talked badly to the petitioner. On her representation to the Senior Manager, the petitioner was allowed to join duty in Rangavilas Mill by order dated 27.08.2013. But the Respondent did not allow her to join duty. She approached the Coimbatore District Mill Workers Union affiliated to AITUC and sought their help. The Union wrote a letter to the Executive Director requesting to give employment to the petitioner. The very same Senior Manager once again issued a letter dated 11.03.2014 addressed to the Union and stated that the petitioner would be given employment in the same Mill from 15.04.2014. The petitioner reported for work on 15.04.2014 as per the order of the Senior Manager. However, the Respondent did not allow her to join duty in spite of the order. The petitioner wrote a letter to the Respondent on the same day with a copy to the Senior Manager and pointed out that she was not allowed to join duty. The Union again sent a letter to the Chief Managing Director, New Delhi requesting him to intervene in the matter. But there was no response to this. The dispute is raised accordingly. Though there was a settlement under Section-12(3) of the ID Act re-fixing the workload there was no settlement or award agreeing or accepting that 56 workers including the petitioner were rendered surplus. There was no request from any of the workers to post them in other mills. Transferring and posting them in other mills without any notice and without getting consent and willingness from the workers including the petitioner is illegal as each mill is a separate independent establishment. The list of 56 workers including the petitioner was not prepared based on seniority or on the principle of last come first go. The petitioner who was a senior employee was chosen for transfer while her juniors were retained in service. This denial of employment amounts to retrenchment and is violative of Section-25(G) of the ID Act. All the 56 employees who were transferred did not join the other mills. They continued in Rangavilas Mill. Even those who joined were later called back and they continued to work in the same Mill. The action of the Respondent in not giving employment to the petitioner in Rangavilas Mill is illegal and unjust. An Award may be passed holding that the action of the Respondent in denying employment to the petitioner is illegal and also directing the Respondent to reinstate the petitioner with continuity of service, backwages and all other attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

Rangavilas Ginning, Spinning and Weaving Mills is a unit of National Textile Corporation Ltd. (NTC), a Central Public Sector Undertaking. The NTC has been incurring loss continuously and became a sick industrial company. Though the Respondent has been demanding rationalization of manpower, this was resisted by the workmen. Only on 04.09.2012 a settlement was made fixing the workload norms and manpower. On implementation of work load in terms of the settlement dated 04.09.2012 the manpower in Rangavilas Mill was to be 347 permanent workmen and 148 casual workmen. There was a scheme for regularization of casual workmen also. Based on fixation of manpower for Rangavilas Mill in terms of the settlement dated 04.09.2012 about 57 casual workmen were in excess of the requirement in the mill at the relevant point of time. So it was decided to deploy the excess casual workmen in the nearby sister units while their names will be retained on the rolls of Rangavilas Mill. Redeployment of manpower was done based on the discussion between the two majority unions who had signed the settlement. Pursuant to the order of the Respondent dated 11.09.2012, 39 workmen reported for work at Pankaja Mills and out of the remaining 18 workmen 17 reported for work at Cambodia Mills. The only workman who did not comply with the order of re-deployment was the petitioner. Her name was removed from the roll by the end of 2012. the petitioner sent a lawyer notice to the Respondent seeking to reinstate her in the Mill. The Respondent sent a reply declining her request. On 25.02.2013 she made a representation to the Southern Regional Office of NTC and also to the Registered Office at

Delhi. These representations were also not considered. On 27.08.2013 the petitioner alongwith an Office Bearer of AITUC Union made representation to the Senior Manager (HR) to permit her to resume duty in Rangavilas Mill. The two recognized unions which came to know about this gave representation opposing re-entry of the petitioner to the Mill. On 01.03.2014 the Coimbatore District Mill Workers Union addressed a letter to the Southern Regional Office of NTC threatening that the General Secretary would go on fast in case the request of the petitioner for re-employment is not allowed. In order to avert such an incident the Southern Regional Office sent a letter to the General Secretary stating that the petitioner will be given re-employment in the mill from 15.04.2014. However the workmen who were members of the two recognized unions opposed the re-entry of the petitioner and threatened that if she was allowed to enter they would resort to stoppage of work. So she could not enter the mill for employment on 15.04.2014. The claim of the petitioner is based on the letters of the Respondent dated 27.08.2013 and 11.03.2014. There is no basis for the claim. What was offered to the petitioner was only re-employment. The failure to comply with the promise of reemployment would not amount to termination of employment so as to fall within the scope of Section-2A of the ID Act. The dispute is not maintainable. The allegations made by the petitioner against the GM of the Mill are denied. The deployment of surplus casual workmen was not based on seniority. It was on the basis that senior casual workmen should have better opportunity for engagement as such opportunity were available in the other two units. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W27 and Ext.M1 to Ext.M39.

6. **The points for consideration are:**

- (i) Whether denial of employment to the petitioner is legal and justified?
- (ii) What if any is the relief to which the petitioner is entitled?

**The Points**

7. The facts of the case are not much in dispute. The petitioner has started to work in Rangavilas Mills of which the Respondent is the General Manager in September 2009. She has claimed that she had completed more than 480 days of work within 24 calendar months by September, 2011 itself. While so, a notice was displayed in the Notice Board of the Mill by which 56 workers including her were transferred to other two mills by name Pankaja and Cambodia Mills. Petitioner made a request to the Respondent to retain her in the same mill. According to her, if she has to go for work at Cambodia Mills to which she was transferred she has to travel 20 kms. from her residence taking two buses. Her son being a visually handicapped child and it would not have been possible for her to go for work by doing so much traveling. Though the Respondent declined her request to retain her in the mill, her representation made to the Senior Manager (HRD) yielded result and he passed an order allowing her to work in the same mill. However, she was not allowed to join duty in spite of this order. Once again the very same Senior Manager issued a letter stating that she would be given employment in the same mill from 15.04.2014. Though she reported for work the Respondent is said to have not allowed her to join duty. The dispute was raised in the circumstances stating that denial of employment to her is not justified and she is to be reinstated in service. In the counter statement the Respondent has contended that there was excess manpower in the mill and because of this, based on the fixation of manpower for the Respondent mill by settlement dated 04.01.2012 it was decided to send 57 casual workmen to other mills and it is accordingly the petitioner and others were sent to other mills. It is stated that though these workmen have to be deployed in other units their names would continue in the rolls of the Respondent mill. It is further stated by the Respondent that the petitioner alone did not comply with the order of re-deployment. The case of the Respondent is that it was not able to give re-entry to the petitioner in the mill as two recognized unions opposed it. Since the petitioner had failed to join the mill to which she was transferred the Respondent is said to have removed her name from the roll by the end of 2012.

8. The Respondent has raised a contention in the Counter Statement that the dispute is not maintainable for various reasons. It is stated in the Counter Statement that what was offered to the petitioner by two letters of the Senior General Manager was only re-employment as cessation of the employment caused by the reason of her failure to report at Cambodia mill has become final. According to the Respondent, the failure to comply with the purported promise of re-employment would not amount to termination of employment by the Management so as to fall within Section-2A of the ID Act. It is further stated that even if it is assumed that the petitioner was not permitted to work in the Mill from 11.10.2012 it was not termination of employment as she continued to remain on the rolls of the Respondent but was only directed to go and work at Cambodia Mill.

9. It could be seen from the Counter Statement itself that the name of the petitioner has been removed from the roll of the mill itself by the end of 2012. This certainly amounts to termination of the petitioner from service. It has been argued by the counsel for the petitioner that even if the dispute raised is against the transfer, the transfer is to be treated as termination from employment as it was an illegal transfer. The petitioner has stated in the Claim Statement itself that though Rangavilas Mills is a unit of National Textiles Corporation, it is a separate and independent establishment governed by separate Standing Orders and governed by separate settlements regarding revision of wages and other

conditions of service. This is the case in respect of all the units of NTC. This case put forth in the Claim Statement has not been controverted in the Counter Statement of the Respondent. What is stated in the Counter Statement is that sending of the petitioner and other workmen to other mills is only re-deployment based on a settlement and the name of the concerned workman always remained with the Respondent mill itself. During evidence and arguments, an attempt has been to make out that it was only deputation and not transfer in the exact term.

10. On going through the documents it could be seen that the Management has effected transfer of the workmen from the Respondent Mill to other Mills. Ext.M19 is the order of the Respondent describing the act of the so-called deployment as transfer itself. This order states that 57 workmen who are surplus casual workers are transferred to Pankaja and Cambodia Mills.

11. The counsel for the Respondent has referred to the decision of the Apex Court in **MANAGEMENT METTUR BEARDSSELL LTD. VS. WORKMEN OF METTUR BEARDSSELL LTD. AND ANOTHER** reported in 2006 2 LLJ 899 in support his argument that consent of the employee is not required for transfer. Admitted transfer of petitioner and others were not with their consent. In the above case it has been held that consent of the workmen is not a pre-requisite for transfer. However, it was a case where the workmen were transferred within the same establishment itself. The counsel for the petitioner has referred to the decision in **JAWAHARLAL NEHRU UNIVERSITY VS. DR. K.S. JAWATKAR AND OTHERS** reported in 1989 2 LLJ 586 where it was held that no employee can be transferred without his consent from one employer to another. It was a case where an employee of the Jawaharlal Nehru University was transferred to Manipur University without his consent notwithstanding any statutory provision to that effect. In the present case it is not in dispute that Cambodia Mills to which the petitioner was transferred is not under the same Management. These different mills have separate Standing Officers, Wage Structure, etc. So the transfer was not a proper or legal one. The transfer could not be justified notwithstanding the fact that other workmen who were transferred had accepted the order and had joined in the other mills. The fact remains that almost all those workmen were called back to the Respondent mill within no time. Those who did not join the other mill had left the establishment itself probably because they were not able to work in the other establishments. That the other workmen did not question the transfer does not mean the transfer is a proper one and that the petitioner also should have complied with the order of transfer. The Apex Court has held in the decision in **MAYANDI VS. DIRECTOR, TAMILNADU STATE TRANSPORT CORPORATION** reported in 1981 2 LLJ 146 that disobeying an illegal order could not be found fault with. It was a case where the Driver of a State Transport Bus refused to proceed with an overcrowded bus in spite of instructions by the Checking Staff. It is pointed out by the counsel for the petitioner that refusal to obey an order of transfer which is illegal is not an act which could be penalized. Consequent to the non-compliance of the transfer order, the name of the petitioner was removed from the roll of the Respondent establishment. The High Court of Madras has held in the decision in **MANI VS. PRESIDING OFFICER, LABOUR COURT, COIMBATORE AND ANOTHER** in WP No. 3288/2009 that if an illegal transfer results in termination or non-employment certainly the jurisdiction of the Labour Court under Section-2(A)2 of the ID Act is very much available. There is no doubt that the very transfer of the petitioner and the subsequent removal of the petitioner from the roll of the Respondent are illegal. So the dispute is very much maintainable.

12. It could be seen from the pleadings as well as the evidence that even the attempt of the petitioner to get into the Respondent mill by re-employment has not succeeded. The petitioner has stated that though she has approached the Respondent to retain her in the same mill after she came to know about the transfer order it was declined by the Respondent. Subsequently she has approached the higher authority, the Senior General Manager and the Respondent was directed to allow her to work in the same establishment. The petitioner has given evidence that though she had gone to the mill to join duty and resume work she was not allowed in spite of the order of the Senior General Manager. The case of the Respondent is that the two recognized unions of the Respondent had objected to the petitioner working in the mill and it was because of this she was not allowed to join duty in spite of the order of the Senior General Manager. The counsel has referred to Ext.M24 a representation said to have been given by the workers of the establishment to the Chief General Manager. The translation of this representation which is in Tamil has been marked as Ext.M25. The representation states that the petitioner is not a person of good character and the Management should not allow her to resume duty. There is also Ext.M26, the translation of which is Ext.M27 by the Secretary of the Union who is also a workman of the Mill, against the petitioner complaining that she has taken away the key of his motorbike. According to the counsel for the Respondent, if the petitioner was taken in, industrial unrest would have prevailed in the establishment. According to the counsel in such a situation it was not necessary to take back the petitioner in service. The counsel has referred to the decision in **SMT. PROTIMA SEN VS. BENEY BHUSHAN SEN** reported in 1972 4 SCC 205 in this respect. It was a case where the establishment had denied work to the workman because of objection by the other workers. The Industrial Tribunal directed reinstatement of the workman. The High Court reversed the order of reinstatement and allowed compensation to the workman. The Hon'ble Supreme Court reversed this decision and directed reinstatement on the ground that there was no plea by the Management that reinstatement would result in loss of industrial peace in the establishment. According to the counsel for the Respondent the only reason for the Apex Court directing reinstatement in the case was the absence of plea by the Management.

According to him in the present case the Respondent has pleaded in the Counter Statement itself that there was objection by the workmen and it was because of this the petitioner could not be given employment again. Certainly it is stated in the Counter Statement that the members of the two recognized unions in the mill opposed re-entry of the petitioner and threatened that if she was allowed to enter the mill they would resort to work stoppage. However, Ext.W25 does not contain a threat by the workmen that work will be stopped if the petitioner is allowed to work in the establishment. In any case this letter itself is not sufficient proof of the fact that there was possibility of industrial unrest in the establishment in view of threat of stoppage of work by the workmen of the Mill. Apart from this it could be seen from the admission of MW1 that he himself was responsible for not allowing the petitioner to start working in the establishment again. What he has stated during cross-examination is that when the petitioner has approached him to join the establishment he had allowed her to join on condition that she withdraws the lawyer notice sent by her and also work in the transferred mill for one month. However, this was not given to her in writing but only orally by MW1. He had not taken any action against those workmen who are said to have prevented her from joining the establishment also. So the case that there was possibility of industrial unrest if the petitioner was allowed to join the establishment is not proved. In the circumstance the petitioner is entitled to be reinstated in the service of the Respondent. The counsel for the petitioner has stated that the petitioner is entitled to back wages on reinstatement. The counsel has referred to the decision of the Apex Court in DEEPALI GUNDU SURWASE VS. KRANTI JUNIOR ADHYAPAK MAHAVIDYALAYA AND OTHERS reported in 2013 10 SCC 324 in this respect. Here it was held that the normal rule in case of wrongful termination is reinstatement with continuity of service and backwages. However, so far as this decision is concerned there is a difference that it was in respect of a permanent employee of the establishment. The petitioner is only a casual employee waiting to be made permanent. There is also the fact that while all the other workmen joined the other establishments to which they were transferred and got back to the establishment within no time she alone was resisting the same. In the circumstance I am not inclined to award entire backwages but restricting it to 25%.

13. In view of the above discussion an Award is passed as below:

The Respondent is directed to reinstate the petitioner in service with 25% backwages and continuity of service within two months of publication of Award. If the amount is not paid within time it will carry interest at the rate of 7.25% per annum.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 8th March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

#### Witnesses Examined:

For the 1 <sup>st</sup> Party/Petitioner	:	WW1, Smt. V. Dhanabagiam
For the 2 <sup>nd</sup> Party/Management	:	MW1, Sri G. Chandramouli

#### Documents Marked :

##### On the petitioner's side

Ex.No.	Date	Description
Ext.W1	11/2010	Identity Card issued by the II Party Management
Ext.W2	03/2011	Identity Card issued by the II Party Management
Ext.W3	-	ESI Card
Ext.W4	-	Training Hall Ticket
Ext.W5	-	I Party son's Medical Report
Ext.W6	-	Casual Workers Details
Ext.W7	1/2011 to 8/2012	Salary Bills of I Party
Ext.W8	26.07.2013	Representative given by the 1 <sup>st</sup> Party to the 2 <sup>nd</sup> Party Sr. Manager with acknowledgement
Ext.W9	27.08.2013	Representation given by the 1 <sup>st</sup> Party to the Sr. Manager (HR) – HOD, which was forwarded to GM to the 2 <sup>nd</sup> Party

Ext.W10	27.08.2013	Letter given to the GM by the SRO/HR of the 2 <sup>nd</sup> Party
Ext.W11	01.03.2014	Letter given by the Union to the ED/SRO of the 2 <sup>nd</sup> Party
Ext.W12	03.03.2014	Relay-Fast Notice issued by the Union to the Chairman-cum-Managing Director, New Delhi
Ext.W13	11.03.2014	Order issued by the Sr. Manager (HR) – HOD to the Union
Ext.W14	08.04.2014	Representative given by the Union to the Senior Manager (HR)- HOD of the 2 <sup>nd</sup> Party
Ext.W15	08.04.2014	Letter given by the Union to the Police for seeking Protection
Ext.W16	15.04.2014	letter given by the 1 <sup>st</sup> Party to the 2 <sup>nd</sup> Party
Ext.W17	16.04.2014	Relay – Fast published in Daily Tamil Newspapers
Ext.W18	28.04.2014	Letter to the CMD New Delhi by the Union
Ext.W19	28.04.2014	Complaint given by the 1 <sup>st</sup> Party to the Commissioner of Police, Coimbatore
Ext.W20	10.05.2014	Complaint given by the 1 <sup>st</sup> Party to the Inspector of Police, Coimbatore
Ext.W21	18.06.2014	2(A) Petition filed before the ALC
Ext.W22	23.07.2014	Remarks filed by the 2 <sup>nd</sup> Party
Ext.W23	08.08.2014	Rejoinder filed by the 1 <sup>st</sup> Party
Ext.W24	26.08.2014	Reply to the rejoinder filed by the 1 <sup>st</sup> Party
Ext.W25	28.08.2014	Reply filed by the 1 <sup>st</sup> Party
Ext.W26	28.08.2014	Failure Report
Ext.W27	11.05.2015	Order of Reference

**On the Management's side**

Ex.No.	Date	Description
Ext.M1	05.09.2008	Sanctioned BIFR Scheme of the Respondent
Ext.M2	04.09.2012	12(3) settlement between the Respondent/Union (Tamil & English version)
Ext.M3	25.04.2014	Communication by the Ministry of Labour & Employment Department to National Textile Corporation and NTC Mills Workers and Staff Union
Ext.M4	10.05.2010	Letter by National Textile Corporation to Respondent enclosing scheme for regularization of casual workers
Ext.M5	24.06.2010	Selection procedure of Respondent in terms of the above scheme. List of casuals selected and minutes of interview committee
Ext.M6	23.07.2010	Minutes of Interview Committee proceedings for regularization of casuals
Ext.M7	23.08.2010	Letter by Respondent to National Textile Corporation Ltd. enclosing the above minutes
Ext.M8	03.09.2010	Reply letter by National Textile Corporation to Rangavilas Mill
Ext.M9	22.10.2010	Letter by Respondent to National Textile Corporation Chief General Manager enclosing the minutes of Interview Committee meeting held on 25.09.2010
Ext.M10	31.01.2011	Letter by National Textile Corporation to the Respondent
Ext.M11	13.05.2011	Minutes of Interview Committee proceedings for regularization of casuals
Ext.M12	16.05.2011	Letter by Respondent to Chief General Manager, National Textile Corporation
Ext.M13	28.05.2011	Reply by National Textile Corporation granting approval of regularization of casual workers

Ext.M14	08.11.2011	Letter by Respondent to Chief General Manager, National Textile Corporation enclosing list of casual workers to be regularized alongwith the minutes of meeting
Ext.M15	19.12.2010	Result of election held on 18.12.2010 and notice regarding recognition of union based on the election results
Ext.M16	-	Liberal translation of notice dated 19.12.2010
Ext.M17	11.09.2012	Letter by Respondent to Chief General Manager, Pankaja Mill transferring 30 casual workers
Ext.M18	11.09.2012	Letter by Respondent to the General Manager, Cambodia Mills
Ext.M19	31.08.2012	Letter by National Textile Corporation to Respondent granting permission to transfer surplus casual workers to Pankaja and Cambodia Mills
Ext.M20	28.12.2012	Legal Notice issued by petitioner
Ext.M21	17.01.2013	Reply notice by Respondent issued to petitioner
Ext.M22	25.02.2013	Letter by V. Dhanabagayam to Registered Office, National Textile Corporation House, Coimbatore with liberal translation
Ext.M23	27.08.2013	Letter by V. Dhanabagayam to the Senior Manager-HR, NTC Limited with liberal translation
Ext.M24	30.08.2013	Representation of workers of the Respondent to the Chief General Manager, National Textile Corporation
Ext.M25	-	Liberal translation of above representation
Ext.M26	24.02.2014	Letter by A. Alexander to B-6 Police Station
Ext.M27	-	Liberal translation of above letter of A. Alexander
Ext.M28	-	Pamphlet issued by Dhanabagayam to elect AITUC
Ext.M29	-	Liberal translation of pamphlet issued by petitioner to elect AITUC
Ext.M30	01.03.2014	Notice issued by the Coimbatore District Mill Workers Union to the National Textile Corporation Ltd. with liberal translation
Ext.M31	11.03.2014	Reply by National Textile Corporation Ltd. to the above communication
Ext.M32	-	2A petition filed by the petitioner before the Regional Labour Commissioner (Central)
Ext.M33	-	Liberal Translated version of 2A petition filed by the petitioner
Ext.M34	23.07.2014	Reply by the Respondent to the above application filed by the petitioner
Ext.M35	08.08.2014	Rejoinder filed by the petitioner
Ext.M36	-	Liberal translation of rejoinder pages 148 to 153
Ext.M37	20.08.2014	Management's reply to the above rejoinder
Ext.M38	28.08.2014	Conciliation Failure Report
Ext.M39	-	Standing Orders of the National Textile Corporation Mills Limited.

नई दिल्ली, 27 सितम्बर, 2017

**का.आ. 2331.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार श्री सुरेश चंद्र साहू, निदेशक, एल.एन. सिस्टम प्राइवेट लिमिटेड, भुवनेश्वर, उड़ीसा व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 54/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2017 को प्राप्त हुआ था।

[सं. एल-40012/47/2013-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 27th September, 2017

**S.O. 2331.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 54/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in Annexure, in the industrial dispute between the employers in relation to the Shri Suresh Chandra Sahoo, Director, L.N. System Pvt. Ltd., Bhubaneswar, Orissa & others and their workman, which was received by the Central Government on 12.07.2017.

[No. L-40012/47/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR****Present:**

Shri B.C. Rath,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 54/2013****Date of Passing Award – 20<sup>th</sup> June, 2017****Between :**

1. Shri Suresh Chandra Sahoo,  
Director, L.N. System Pvt. Ltd.,  
Regd. Office – P/2, Samantpuri, 1<sup>st</sup> Floor,  
Unit-15, Chandrasekharpur, Bhubaneswar,  
Orissa – 13.
2. The S.D.O., Telegraphs, BSNL,  
Hindol Road, Dist. Dhenkanal, Odisha.
3. The General Manager (T),  
BSNL, Dhenkanal Telecom Circle,  
Dakhan Kali Road, Dhenkanal, Orissa – 759 001

...1<sup>st</sup> Party-Managements**(And)**

Shri Guru Prasad Jena,  
S/o. Basanta Kumar Jena,  
At. Rameswarpur, Po. Kankadapal,  
Via/Ps./Dist. Dhenkanal, Orissa

...2<sup>nd</sup> Party-Workman.**Appearances:**

None	...	For the 1 <sup>st</sup> Party-Management No. 1
Shri B.C. Majhi, S.D.O. (T) Hindol Road	...	For the 1 <sup>st</sup> Party-Management No. 2
Shri L.K. Sahoo, SDE (Legal)	...	For the 1 <sup>st</sup> Party-Management No. 3
Shri Guru Prasad Jena	...	For himself the 2 <sup>nd</sup> Party-Workman

**AWARD**

The Government of India in the Ministry of Labour in exercising its authority as conferred under section 10 of the Industrial Disputes Acts (herein-after referred to as “the Act”) read with section 2-A of Sub-section – 2 have referred a dispute vide Letter No. L-40012/47/2013 9iR(DU), dated 29.07.2013 for its adjudication and the schedule of reference is “whether the action on the part of M/s. L.N. System (P) Ltd., Bhubaneswar, contractor as well as Principal Employer, GMTD, BSNL, Dhenkanal by shifting Shri Guruprasad Jena, Data Entry Operator from GMTD, BSNL, Dhenkanal in the entire decision making process without following the principles of natural justice is appropriate and justified” To what relief the workman is entitled to?”

2. Shorn of unnecessary details the case of the 2<sup>nd</sup> Party-disputant workman, as emerges from his statement of claim, is that he was appointed as a Data Entry Operator in the office of G.M.T.D., BSNL, Dhenkanal with effect from July, 1998. He was working sincerely with utmost devotion to his duty in the said Office till he was asked to report in

the office of S.D.O. (T), Hindol Road on 14.12.2012. When he came to the office of the S.D.O., Hindol to submit his joining report, S.D.O. (T), Hindol did not allow him to join his duty. It has been further pleaded by the disputant workman that though, he was being shown employed through contractor M/s. L.N. System, he was virtually working under the direct supervision and control of Accounts Officer (Computer) G.M.T.D., BSNL, Dhenkanal and he was receiving his monthly wage directly from the BSNL. While being appointed through the contractor there was no pre-condition that his job was transferable to any place other than Dhenkanal. When one Shri J.K. Samantaray came as Accounts Officer, Finance Department of G.M.T.D., BSNL, he had a misunderstanding with the disputant workman and on his pressure the disputant was asked by M/s. L.N. System to report before S.D.O. (T) Hindol Road as a Data Entry Operator. The S.D.O. (T), Hindol Road, did not allow him to join taking a stand that no transfer letter of Data Entry Operator working at Hindol Road was received. According to the 2<sup>nd</sup> party-workman his transfer from the office of the GMTD, BSNL, Dhenkanal to SDO(T) BSNL, Hindol Road is contrary to the terms and conditions of his engagement and as such the same is illegal and unjustified. It is his further case that refusal to accept his joining report by S.D.O (T), Hindol Road is also illegal and the same amounts to refusal of employment to him or his retrenchment. Since his retrenchment was without compliance of the provisions of the Section 25-F of the Act, the same is illegal and unjustified. Hence, he is required to be reinstated in the office of the G.M.T.D. Dhenkanal with all back wages and other consequential service benefits.

3. The Management No. 2 & 3 have submitted a joint written statement contesting the claim statement of the disputant workman whereas, the Management No. 1 has been set exparte for not contesting the claim inspite of sufficiency of notice on him. It has been contended on behalf of the Management No. 2 & 3 that they have nothing to do with the engagement and posting of the disputant workman as the work of Data Entry Operation is being made through out-sourcing. Such work of data entry was given to the contractor M/s. L.N. System Pvt. Limited, Bhubaneswar and the disputant workman was employed by the said contractor. When the disputant workman was found very irregular to his duty, the contractor was informed for taking suitable action against him. Accordingly he was directed by his contractor to report before S.D.O. (T), Hindol on 14.12.2012. But, he failed to join in his duty and as such, there was no occasion to deny him employment. It is their specific stand that the disputant workman has no claim against them and the liability, if any, is to be complied with by the Management No. 1.

4. On the aforesaid pleadings of the parties the following issues were settled for just and proper adjudication of the dispute.

#### ISSUES

1. Whether the action on the part of M/s. L.N. System (P) Ltd., Bhubaneswar, contractor as well as Principal Employer, GMTD, BSNL, Dhenkanal by shifting Shri Guruprasad Jena, Data Entry Operator from GMTD, BSNL, Dhenkanal in the entire decision making process without following the principles of natural justice is appropriate and justified?
2. To what relief the workman is entitled to?

5. The 2<sup>nd</sup> party-workman is examined himself as a witness and filed documents like letter dated 22.2.2013 of the 2<sup>nd</sup> party-workman, letter of the workman dated 2.1.2016 addressed to the Dy. C.L.C. (C), Bhubaneswar, letter of workman dated 17.12.2012, letter of the workman dated 15.11.2012 addressed to the A.L.C.(C), Bhubaneswar, copies of the experience certificates issued to the 2<sup>nd</sup> party-workman, copy of the register of wages, copy of the letter of M/s. L.N. Systems dated 7.12.2012 addressed to the workman, copy of another letter dated 12.12.2013 addressed to the workman photocopy of order issued by the GMTD, Dhenkanal to M/s. L.N. System Private Limited and photocopy of wage register signed by the Retailer Manager Co-ordinator, GMTD, Dhenkanal which are marked as Ext.- 1 to 10, in support of his claim. To rebut the stand of the disputant workman the Management has examined S.D.O. (T) and exhibited the transfer order from GMTD, Dhenkanal to SDO, Hindol Road and reply of the contract addressed A.L.C.(C), Bhubaneswar.

#### FINDINGS

6. For the sake of convenience both the issues are taken up together.

Admittedly, no letter of appointment or letter offering the terms and conditions of appointment issued in favour of the workman has been filed by either of the contesting parties to ascertain the relationship between the disputant workman and the Managements of BSNL. But, on a perusal of the claim statement, oral testimony of the disputant workman and documents relied upon by him it is crystal clear that service of the disputant workman was availed by the Managements of BSNL on hire through the contractor Management No. 1 and as such Management No. No. 2 & 3 can be safely said the principal employers, whereas Management No. 1 is the immediate employer of the disputant workman. Further, it is seen from the wage register (Ext.-6) that the disputant workman was receiving his wage from his contractor M/s. L.N. Systems Pvt. Ltd. Thus, there is no serious dispute to the fact that the disputant workman was engaged by the out-sourcing agency M/s. L.N. Systems Pvt. Limited to work as a Data Entry Operator in the office of

the Management No. 2 & 3 and his wage register was maintained by the Management No. 1. No serious dispute is also raised to the period of engagement of the disputant workman in the office of the Management No. 1. He was found to have been working continuously and uninterruptedly as a Data Entry Operator in the office of the Management No. 1 from the year 1998 onwards till he was asked to join at S.D.O.(T), Hindol Road. It is also seen from the pleadings and evidence of the Management No. 2 & 3 as well as the evidence of the disputant workman that officers of the Management No. 2 & 3 informed the contractor about unsatisfactory performance of the disputant workman. After such report the disputant workman was directed by his immediate employer to report in the office of the S.D.O. (T), Hindol Road with effect from 14.12.2012. Thus, it can be concluded from the correspondences between the principal employer and the contractor as well as from the correspondences between the Management No. 1 and the disputant-workman as well as pleadings and evidence advanced by the parties that the transfer of disputant workman from Dhenkanal to Hindol Road was effected at the instance of the principal employer Management No. 2.

7. In view of the terms and conditions of the reference as well as the pleadings and evidence of the parties now it is to be seen whether directing the 2<sup>nd</sup> party-workman to report before S.D.O.(T), Hindol Road amounts to his transfer from one office to another office situating in different places and whether such transfer order was legal and justified. It is well settled that the rights of an employer and an employee, apart from any statutory provisions, are governed by the terms of contract between them or by the terms necessarily implied there from. In the case at hand no order of appointment or offer of appointment letter to the disputant workman is filed from either side though it is not seriously disputed that he had been working in the office of the G.M.T.D, BSNL, Dhenkanal from July, 1998 onwards as a Data Entry Operator through the contractor Management No. 1. No assertion has been made by the principal employer or the immediate employer that the job of the disputant workman was transferable in nature and he was supposed to attend his duty in the place other than BSNL, Dhenkanal. It is not in dispute that the offices of the Management No. 2 & 3 are in different town even though nature of job entrusted to the disputant workman in both the places are identical. The evidence and the documents relied upon by the parties go to indicate that the disputant workman was paid wages as per minimum wage fixed by the Central Government and his job was temporary in nature. Such engagement or employment in the office of the Management No. 2 being hired through a contractor on the basis of daily minimum wage cannot be expected to be transferable. Neither the management of BSNL nor the Management No. 1 Contractor has taken any stand that the disputant workman was given understanding while being engaged as a Data Entry Operator that he is to work in any place other than Dhenkanal also. In absence of such pleadings in the given situation, the burden lies on the Managements to establish that shifting of the disputant workman to one place to another place was a term and condition when he was engaged/employed as a Data Entry Operator in Dhenkanal. Undoubtedly transfer or shifting of a workman from one place to another place by his employer without a stipulation in this regard in the contract of appointment of the disputant workman would amount a violation of service condition and as such, the provisions of Section 9-A is required to be complied with before shifting the disputant workman from Dhenkanal to Hindol Road.

8. Further, it is pertinent to mention here that the disputant workman was working in Dhenkanal from July, 1998 onwards till he was asked to report at Hindol Road. It is already said that he was shifted to Hindol Road soon after adverse report was given by the Management No. 2. It is emerging from the evidence of the parties that no other adverse report was ever received against the disputant workman till the report expedited his transfer. It is seen that report of unsatisfactory performance was submitted after fourteen years of engagement of the disputant workman. Had his performance was not satisfactory such adverse report should be available in the initial period of appointment of the disputant workman. When there is nothing adverse on the performance of the disputant workman till the year 2012, the shifting of the disputant workman from Dhenkanal to Hindol Road seems to have been done with malafide intention and it shall be presumed from the discussions made above that the shifting was made at the instance of the principal employer, BSNL, GMTD, Dhenkanal. Further, it cannot be over-sighted that the employer contractor is set exparte in the case and in absence of any pleading from his side justifying the shifting of the disputant workman from Dhenkanal to Hindol Road, it can also be inferred that the shifting/transfer of the disputant workman was in violation of the condition of his appointment/engagement. Hence, the action on the part of M/s. L.N. System, Bhubaneswar contractor in shifting the disputant workman Shri Jena from G.M.T.D. BSNL, Dhenkanal to Hindol Road is not justified.

9. Coming to the other terms of reference i.e. to what relief the workman is entitled to, it is apparent from the statement of claim that prayer has been made by the disputant workman for his reinstatement along with back wages with effect from the date of his shifting. Such prayer has been made on a contention that the disputant workman was not permitted to join at Hindol Road on a plea that Data Entry Operator engaged therein was not transferred to other place and as such no vacancy arose at Hindol Road office to accept the joining report of the disputant workman. The Management of BSNL has pleaded that the disputant workman did not report to his duty in the new place of shifting. But, it is emerging from the cross examination of M.W.-1 that the disputant workman had been to the office at Hindol Road once after his transfer and thereafter he was found absent. Such plea of voluntarily abandonment of service is not acceptable in absence of any pleading and evidence to the effect that the disputant workman was issued with show cause notice for his such unauthorized absence. Admittedly, the terms of reference as worded does not call upon the

Tribunal to examine and to give any findings on the dispute raised by the disputant workman that he was not permitted to join at Hindol Road and whether such refusal to the disputant workman amounts to his retrenchment or termination of service as defined under section 2(oo) of the Act. The Industrial Tribunal/Labour Court constituted under the Act is a creature of that statute. It acquires jurisdiction on the basis of reference made to it. The Tribunal has to confine itself within the scope of the subject matter of the reference and cannot travel beyond the same **“Their Lordship of the Supreme Court in the matter of Management of Express Newspapers (Private) Limited Madras V. The Workers and Ors. MANU/SC/0267/1962, (1962)IILLJ227SCC, held that “since the jurisdiction of the Industrial Tribunal in dealing with industrial dispute referred to it under Section 10 is limited by Section 10(4) to the point specifically mentioned in the reference and matters incidental thereto, the appropriate Government should frame the relevant orders of reference carefully and the questions which are intended to be tried by the Industrial Tribunal should be so worded as to leave no scope for ambiguity or controversy. An order of reference hastily drawn or drawn in casual manner often gives rise to unnecessary disputes and thereby prolongs the life of industrial adjudication which must always be avoided.”** In that view of the matter I do not find it just and appropriate to give any observation or findings on the allegation of the disputant workman that refusal to join him at Hindol Road amounts to his illegal termination/retrenchment.

10. However, the terms of reference requires the Tribunal to specify the relief to which the disputant workman is entitled to and the same being incidental to the dispute is also required to be dealt by the Tribunal. It is already held that there was relationship of “employer and employee” between the Management No. 1 and the disputant workman and the action of the Management No. 1 in shifting the disputant workman from Dhenkanal to Hindol Road at the instance of the principal employer was not in conformity to the implied term and condition of employment/engagement of the disputant workman as Data Entry Operator at Dhenkanal. Such transfer being malafide is illegal and unjustified. In view of such conclusion the disputant workman is deemed to be continuing as a Data Entry Operator in the GMTD, Dhenkanal and accordingly he is entitled to all service benefits including his back wages.

11. Reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2017

**का.आ. 2332.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजिंग डायरेक्टर, मैसर्स श्रीवेनी अर्थ मूवर्स प्राइवेट लिमिटेड, तमिलनाडु एवं उनके कर्मचारी के प्रबंधन के संबंध में निर्यातकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 74/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.08.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 27th September, 2017

**S.O. 2332.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 74/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in Annexure, in the industrial dispute between the employers in relation to the Managing Director, M/s. Thriveni Earth Movers Private Limited, Tamilnadu and their workman, which was received by the Central Government on 30.08.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

#### Present:

Shri B.C. Rath,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 74/2016**

**Date of Passing Order – 27<sup>th</sup> April, 2017**

**Between :**

1. The Managing Director,  
M/s. Thriveni Earth Movers Private Ltd.,  
Regd. Office. No. 22/110, Greenways Road,  
Fairlands, Salem, Tamil Nadhu – 636 016  
Site Office At. Unchabali, Post. Bamebari,  
Dist. Keonjhar – 758 034

...1<sup>st</sup> Party-Management**(And)**

Shri Dillip Kumar Mohanta,  
S/o. Laxmidhar Mohanta,  
At./Po. Jhipabanda, Ps. Badampahada,  
Dist. Mayurbhanj – 757 047

...2<sup>nd</sup> Party-Workman**Appearances :**

Shri B.C. Swain, General Manager (HR) ... For the 1<sup>st</sup> Party-Management No. 1  
Shri D.K. Mohanta ... For Himself the 2<sup>nd</sup> Party-Workman

**ORDER**

The hearing of the case registered under section 2-A(2) of the I.D. Act is taken up today. Authorized representative of the Management and the workman are present. The case is posted today for filing of rejoinder on behalf of the workman and for settlement of issues. But, the 2<sup>nd</sup> Party-workman has moved a petition today along with a Memorandum of Settlement allegedly reached-out between the parties making a prayer for withdrawal of the dispute on the reason that he was taken back into service as per the terms and conditions of the settlement for which he is not interested to prosecute the proceeding. On being asked the workman as well as the authorized representative of the Management submitted that they were aware of the contents of the petition and the Memorandum of Settlement and the petition is moved voluntarily on his own accord. Accordingly it is submitted by the workman that he shall be permitted to withdraw the application. The authorized representative of the Management has no objection to such petition. When the parties to the case have amicably settled their dispute out of court and arrived at a Memorandum of settlement, there seems no justification to deny permission to withdraw the application. Hence, the petition of the 2<sup>nd</sup> party-workman to withdraw the application is allowed and the application under section 2-A(2) is decided as withdraw without any award.

Dictated &amp; Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2017

**का.आ. 2333.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार, जिला धनकनाल, ओडिशा व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 14/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.09.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 27th September, 2017

**S.O. 2333.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 14/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom, District Dhenkanal, Odisha & others and their workman, which was received by the Central Government on 21.09.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR****Present:**

Shri B.C. Rath,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 14/2016**

**Date of Passing Award – 13<sup>th</sup> July, 2017**

**Between :**

1. The General Manager, Telecom,  
Dist. Dhenkanal, Odisha.
2. The S.D.O., Telecom,  
Dhenkanal.
3. The Chief General Manager,  
Telecom Circle, Bhubaneswar

...1<sup>st</sup> Party-Managements

**(And)**

Shri Madhusudan Khatua,  
S/o. Ram Chandra Khatua,  
At. Sudadhakateni, P.O. Baulpur,  
P.S. Dhenkanal Sadar,  
Dist. Dhenkanal

...2<sup>nd</sup> Party-Workman

**Appearances :**

None ... For the 1<sup>st</sup> Party-Managements  
Shri Madhusudan Khatua ... For himself the 2<sup>nd</sup> Party-Workman

**AWARD**

This order arises out of an issue of maintainability of the application filed under section 2-A(2) of the I.D. Act on the ground of limitation. Undisputedly the applicant-workman has filed a petition to condone the delay on the grounds stated therein while filing the main 2-A(2) application. On being noticed the Management filed a written application raising objection to the maintainability of the application of the applicant keeping in view the provisions of Section 2-A(3) of the I.D. Act. In his written counter to such objection of the Management the applicant-workman has contended that the dispute with regard to his alleged termination being persistent and the same is yet to be resolved/addressed he has sufficient cause of action to raise the dispute individually on his alleged termination keeping in view the amended provisions of Section 2-A(2) of the I.D. Act r/w. Section 5 of the Limitation Act.

2. There is no serious dispute that the provisions of sub-clause 1 and 2 of Section 2-A of the I.D. Act extend a scope to an individual workman to raise an industrial dispute directly before the Labour Court/Tribunal by filing an application if the said dispute relates to his discharge, dismissal, retrenchment or otherwise termination of his service by his employer provided an application to the conciliation officer of the appropriate Government for conciliation of the dispute is not adjudicated after expiry of forty five days from the date of presentation of such application before him. Sub-clause (3) of Section 2-A, further mandates that the application under section 2-A(2) shall be made to the Labour Court/Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1) of Section 2-A of the Act. Coming to the case at hand it is seen from the main application of the disputant workman that his service was allegedly terminated in the year 1986 and undisputedly the dispute has been raised before this Tribunal on 26.02.2016 in the event of presentation of application under section 2-A(2) by the disputant workman. The provisions of sub clause (2) and (3) of Section 2-A have been incorporated in the year 2010 by way of an amendment and even if it is accepted that the applicant could not file his application earlier due to want of provisions in the I.D. Act to raise an individual dispute, it can be presumed that he could have filed his application under section 2-A(2) within three years of the incorporation of the amended provision. The I.D. Act being a special statute and limitation period for filing such an application having been specified in sub-clause (3) of Section 2-A of the Act, provisions of Section 5 of the Limitation Act has no applicability in the instant case. On a bare reading of the proviso sub-clause (3) of Section 2-A it is clear that the dispute of dismissal, retrenchment, termination shall be filed within three years of such alleged termination/retrenchment/dismissal. I am of

the opinion that the above proviso does not permit the Tribunal to condone the delay under Section 5 of the Limitation Act if sufficient cause is shown in this regard. The I.D. Act, which is a special law, prescribes the period of limitation for filing such an application and it is silent on the applicability of the provisions of Limitation Act and as such in my considered view the application filed under section 2-A(2) by the applicant is not maintainable in view of the same being preferred sixteen years after of his alleged dismissal. When the Act mandates that a particular nature of dispute can be raised directly before a Labour Court/Tribunal within a specified period of the dismissal/termination/retrenchment, there is no scope for the Tribunal to condone the delay.

3. Hence, it can be said that the application preferred under section 2(A) sub-clause (2) merits no consideration as the same is not preferred within the stipulated period of limitation and accordingly the case is disposed of.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2017

**का.आ. 2334.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, बैंगलोर एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (सीआर संख्या 15/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.09.2017 को प्राप्त हुआ था।

[सं. एल-42012/77/2011-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 27th September, 2017

**S.O. 2334.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CR No. 15/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Hindustan Aeronautics Limited, Bangalore and their workman, which was received by the Central Government on 07.09.2017.

[No. L-42012/77/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 18<sup>th</sup> August, 2017

**PRESENT :** Shri V. S. RAVI, Presiding Officer

**C.R. No. 15/2016**

#### I Party

1. Sh. K.S. Sugunachary,  
S/o Sh. K.S. Shamachari,  
No. 57, 2<sup>nd</sup> Cross, Sanjaynagar,  
Marathhalli, Bangalore – 560037
2. Sh. M. Dinagaran,  
S/o K. Mohanvelu,  
No. 26/1, Thimmareddy Building,  
Opp. Kannada Primary School,  
Sanjaynagar, Marathhalli,  
Bangalore – 560037

Advocate for I Partys :

Mr. B.D. Kuttappa

#### II Party

The General Manager,  
Hindustan Aeronautics Limited,  
Bangalore Complex, Vimanapura Post,  
Bangalore – 560017

Advocates for II Party:

Mr. Swamy & Mr. Singh

**AWARD**

1. The Central Government vide Order No.L-42012/77/2011-IR(DU) dated 08.04.2016 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

**SCHEDULE**

**“Whether the claim of Shri K S Sugunachary and Shri M Dinakaran that they are workmen, directly working under the supervision and control of Hindustan Aeronautics Limited and for reinstatement into the rolls of HAL is legal and justified? If yes, to what relief the workman is entitled to and which date?”**

2. The I Party has stated in the claim statement as follows:-

It is submitted that, there are 2 employees in this case namely Sh. K.S. Sugunachary and Sh. M. Dingaran. The I Party workman Sh. K.S. Sugunachary, joined the services of the II Party management on 16.04.1985 and other workman Sh. M. Dingaran, joined the services of the II Party management on 19.05.1985. The II Party is practicing unfair labour practise. Therefore, the I Party workman prays that, this Court may be pleased to direct the II Party to reinstate the I Party in their original post and pay all the consequential benefits like back wages and continuity of service etc., as if they are not terminated from services by allowing the reference and pass such other order/s as deems fit under the circumstances of the case in the interest of justice.

3. However, the Hon’ble Supreme Court in Civil Appeal Nos. 9332-9333/2010, in the case of Nashik workers Union Vs Hindustan Aeronautics Limited has clearly held as follows:- “As we have set aside the order passed in L.P.A. No. 84 of 2006 and opined that the ‘appropriate Government’ in relation to the respondent company (HAL) is the State Government, the matter has to be remitted to the High Court for fresh adjudication on merits.”

4. In the above mentioned facts and circumstances, an important and preliminary point arises for consideration, with regard to the above mentioned matter, as follows:- “Whether this Tribunal lacks jurisdiction to try the present Matter?”

5. **POINT :-** In the present case, the I Party has prayed to hold that the said HAL Management is the true employer of the I Party workman and also further requested to direct the said HAL Management to reinstate the I Party workman in his original post with full back wages, continuity of service and all other consequential benefits, in the interest of justice. Hence, it is crystal clear that as per the above mentioned judgment, this Tribunal lacks jurisdiction to try the present matter.

6. Further, taking into consideration the above mentioned points and principles laid down by the Lordships of the Hon’ble Supreme Court of India, this Tribunal has no other alternative, except to follow the said judgement. Further, in the light of the above mentioned judgment of the Hon’ble Supreme Court of India, the I Party cannot seek the reliefs, before this Tribunal. At the same time, this Tribunal is not expressing any opinion on other issues raised by both the sides, as this Tribunal lacks jurisdiction to entertain the present matter of this nature and also liberty is granted to the I Party to raise the dispute before the proper, competent and appropriate Judicial Forum/Tribunal/Court within 30 days from the date of receipt of the present Award passed by this Tribunal, in the best interest of justice, equity and fair play. Accordingly, this point is answered. Hence, the following Award is passed:-

**AWARD**

**This Tribunal has no jurisdiction to entertain the dispute raised by the I party, particularly, in the light of the above mentioned judgement passed by the Hon’ble Supreme Court in Civil Appeal Nos. 9332-9333/2010, in the case of Nashik workers Union Vs Hindustan Aeronautics Limited and the present matter suffers for want of jurisdiction before this Tribunal and liberty is granted to the I party to raise the dispute before the proper, competent and appropriate Judicial Forum/Tribunal/Court, within 30 days from the date of receipt of the present Award, by adopting the procedure known under the law, in the best interest of justice, equity, good conscience and fair play and this Tribunal has not expressed any opinion regarding the various other issues raised by both the parties, as the present matter has been disposed of, on the limited ground of jurisdiction point alone, and also, without costs, for the above mentioned facts and circumstances.**

(Dictated, transcribed, corrected and signed by me on 18<sup>th</sup> August, 2017)

V. S. RAVI, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2017

**का.आ. 2335.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डाकघर, वरिष्ठ अधीक्षक, धारवाड़ प्रभाग, धारवाड़ व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 17/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.09.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 27th September, 2017

**S.O. 2335.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 17/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the Senior Superintendent of Post Office, Dharwad Division, Dharwad & others and their workman, which was received by the Central Government on 15.09.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
BANGALORE**DATED : 4<sup>th</sup> September, 2017**PRESENT : Shri V. S. RAVI, Presiding Officer****I.D. No. 17/2014****I Party**

Sh. Sadashivappa (Sadananda),  
Bhajantri, S/o Hanumanthappa,  
Quarters, City High School,  
Vijaya Nagara,  
Hubli

**II Party**

1. The Senior Superintendent of Post Office,  
Dharwad Division, Dharwad
2. The Post Master, Vijayanagara Post Office,  
Hubli

**AWARD**

1. After the receipt of the Application, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. None appeared for the I party and I party also called absent. In fact, notice of hearing has been sent to the I party by RPAD through the Department of Posts, India and Still, no representation has been made on behalf of I party and also, I party is called, absent. Further, the memo of retirement is also filed by the I Party's Representative, as the I Party is not showing any interest in conducting the case.

2. On perusal of records already notices have been sent and, the said notices have been served to both the parties. Hence, it is found that in spite of giving sufficient and adequate chances by issuing notices of hearing to I party, the I party has not made any appearance. In such circumstances, the matter is posted for passing Award, after the perusal of entire records brought on record.

3. Further, from the above mentioned circumstances, it would be very much clear, in the present matter, that the I party has no interest to contest the present matter, inspite of the service of notices of hearing to the I party. It is for the I party to make out a case that I party is entitled to the above mentioned benefits and that the II Party has done a mistake by denying the said benefits. On the other hand, Mr. Vishvanath, Assistant Superintendent of Post Office representative II party present. However, I Party has not appeared before this Court. Further, it is reported on behalf of II party that, II party has not violated any provisions of the Industrial Dispute Act and the I Party is not the regular employee to claim relief u/s 2(a) of Industrial Dispute Act and the details mentioned in the claim statement are not true. Under the above mentioned special circumstances and peculiar facts, this Tribunal is constrained to pass appropriate award, after the perusal of materials available on record.

4. Since no appearance has been made by I Party, the present reference has only to be rejected for non-prosecution. Therefore, keeping in view the conduct of I party in, not appearing before this Tribunal, even though notice has been sent to the I party by way of RPAD in Transaction No. A RK343447434 IN, it is crystal clear that the I party is no more interested in prosecuting the claim against II party. In the result and also in above mentioned facts and situations, it is to be held that the present reference has to be rejected, for non prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following award.

#### AWARD

**Reference is Rejected for non-prosecution, by the I party, though sufficient and adequate opportunities have been granted to the I party.**

(Dictated, transcribed, corrected and signed by me on 04<sup>th</sup> September, 2017)

V. S. RAVI, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2017

**का.आ. 2336.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमांडिंग ऑफिसर, आईएनएचएस असिनिनी, मुंबई व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/18 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2017 को प्राप्त हुआ था।

[सं. एल-14012/41/2013-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 27th September, 2017

**S.O. 2336.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Reference No. CGIT 2/18 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the Commanding Officer, INHS Asvini, Mumbai & Others and their workman, which was received by the Central Government on 19.09.2017.

[No. L-14012/41/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

**PRESENT : M. V. DESHPANDE, Presiding Officer**

**REFERENCE NO. CGIT-2/18 of 2014**

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF  
INHS ASVINI & WESTERN NAVAL COMMAND**

1. The Commanding Officer,  
INHS Asvini,  
Colaba,  
Mumbai – 400 005.
2. Western Naval Command,  
Western Naval Command Headquarters,  
Shahid Bhagat Singh Road,  
Mumbai – 400 001

**AND**

**THEIR WORKMEN**

Ms. Sangita Kawale,  
Sai Wadi, Old Dongri,  
R. No. 110, Camp No.7,  
Andheri [E], Mumbai – 400 069.

**APPEARANCES :**

FOR THE EMPLOYER : Mr. H.D. Rathod, Advocate  
 FOR THE WORKMEN : Ms. Pooja Kulkarni, Advocate

Mumbai, dated the 3<sup>rd</sup> August, 2017

**AWARD**

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-14012/41/2013 – IR (DU) dated 25.02.2014. The terms of reference given in the schedule are as follows :

“Whether the action of Western Naval Command, Headquarters, Indian Navy, Mumbai in terminating the services of Ms. Sangita Ganpat Kawale, Peon [M8414B] of INHS Asvini vide Order dated 24.12.2009 with immediate effect is legal, proper and justified ? If not, then to what relief including the demand of reinstatement in service with consequential benefits with retrospective effects, Ms. Sangita Ganpat Kawale is entitled and from which date and what other directions are necessary ?”

2. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives.

3. Second party workman filed statement of claim Ex.7. According to the second party workman, the first party employer appointed her as a Peon at INS Asvini, Colaba. She was appointed on a permanent post on probation for the period of 2 years. She performed her duties to the best of her abilities. She never made any mistake while performing the duties. She never refused to perform any duties assigned to her from time to time. She diligently performed all the work which was even beyond the scope of her duties. She was assigned the work in the library as Librarian, cleaning the library, computer operator, issuing books, inward-outward of mail, distribution of circulars etc. She also performed work of cleaning and dusting furniture, sweeping, swabbing, cleaning the name plates outside offices etc.

4. According to concerned workman, she was harassed by the officers of employers namely Babu Gautam, CIE-I, Dharmendra Pandey, Sailor, Cap. Sanjeev Kapoor, SDEO. They used to assign work to her that was beyond scope of her normal duties. They used to make her to repeat cleaning windows. Cap. Sanjeev Kapoor used to tell her to buy cigarettes, bring her personal computer from his car and deliver it to EDP Section for repairs. The said captain used to tell her to get liquor bottles from mess and deliver to him along with empty bottles of liquor. The said captain used to ask her to collect his personal cloths such as Barmuda for repairs. He used to ask her to buy milk and keep it in his car, get his ration. He used to ask her to deliver his personal letter at Mumbai Central station to his son. The workman never refused to carry out these jobs though she did not like. However, the said captain as well as Babu Gautam used to advise her to leave the job and work in film industry as she is beautiful. They used to enquire her about her personal and family life. The sailor used to have her lunch. There were two libraries, one was medical library and other was ship library. Sailor used to pass on said work to her, though managing of the said libraries was the work of said sailor.

5. According to the concerned workman, her husband was suffering T.B. She has a small daughter who does not have right kidney. Her daughter is prone to infection. She requires constant medication and treatment. Due to sensitive condition of her daughter, her husband was staying at Delhi with his parents to avoid infection to her daughter from her husband. Subsequently, her husband expired of T.B. on 23.3.2010. That time the said captain time and again threatened the workman of termination of her services if she refused to obey her orders. However, the concerned workman suffered all the aforesaid humiliations quietly without hesitating about the same due to these precarious family conditions.

6. It is a case of the workman that she never remained absent in any manner for more than 100 days as alleged. She had informed to one of the aforesaid officers telephonically whenever she had to remain absent. She never remained absent without any gross cause of her husband's or daughter's precarious health conditions. However, she was illegally terminated in gross violation of principles of natural justice by order dated 24.12.2009 without assigning any reasons and without issuing charge sheet and without conducting enquiry etc. As such according to workman termination of her services is illegal, unjust, unfair and improper.

7. According to concerned workman, she raised industrial dispute before Regional Labour Commissioner [Central] at Mumbai. Conciliation failed. Hence the Conciliation Officer submitted his failure report to the appropriate government. After forming opinion that industrial dispute exists between the parties, the appropriate government referred the dispute to this tribunal. The concerned workman is therefore asking to declare the termination of her services as illegal, unjust and improper and quash and set aside the termination order dated 24.12.2009 and order passed by the Appellate authority dated 5.4.2010 along with communication dated 18.2.2014 by which the order dated

5.4.2010 passed by the Appellate authority was communicated to her. She is therefore asking to reinstate her with full back wages with continuity of service and other consequential benefits.

8. First party management has resisted the claim by filing written statement Ex.8. It is the contention of first party management that the concerned workman was appointed on probation for a period of 2 years. Asvini vide letter No. 227/PSL/Peon dated 21.11.2009 have recommended to initiate action for termination of her services due to unauthorized absence despite of being warned and counseled on several occasions by the departmental officer. As per the existing instructions contained in GOI, MHAOM/4/10/66/ESTTS dated 26.8.1967 in cases where the provisions for specific conditions regarding termination of service without any notice during or at the end of period of probation including extended end of the period if any has been specifically made in the letter of appointment, it would be desirable to terminate the services of the probationer in terms of letter of appointment and not under rule 5 (1) of CCS Rules 1965. On the basis of non-satisfactory service of concerned workman and recommendations of the Commanding Officer INHS Asvini, competent authority had terminated her services invoking terms & conditions contained in para – 3 of appointment letter of the concerned workman. Her services are liable to be terminated without any notice and without assigning any reason during the probation period. The concerned workman had appealed against the termination on the ground that her husband was also suffering from T.B. since January 2009. However, considering that the concerned workman has remained un-authorisedly absent and that she had suppressed her marital status at the time of joining service the competent authority vide order dated 5.4.2010 has rejected her appeal based on the recommendations, of the Commanding Officer INHS Asvini. So according to the first party management the termination of services is legal and proper.

9. It is also a case of the management that the concerned workman was employed as a Peon by an appointment letter dated 24.11.2008 and she joined the duties on the same day. She was posted as Peon in the education department of INHS Asvini. The initial appointment was provisional and subject to verification of caste, birth date, school leaving certificate and marital status and other criteria through proper channels and police verification. However, during the pre-recruitment formalities, second party workman deliberately concealed her true marital status. Although the married woman she had presented herself as a spinster, giving her name as Kum. Sangita G. Kawale. Her husband's name was Narendra Ghanshyam Singh which she concealed every where in the paper work. This was discovered afterwards.

10. It is also a case of the management that the concerned workman used to remain absent from work without obtaining necessary permission or without giving prior intimation to the office. She remained absent from work constantly without any intimation for a total period of 106 days in one calendar year since joining her services. She was found to be submitting false medical certificates to justify her absence. Apart from her chronic absenteeism, she used to refuse to do peon's job without any reason saying that it was not her duty. There were complaints against her from her seniors for insubordination and refusal of work. She was issued warnings; show-causes admonitions during the year 2009. Ultimately, by letter No. 227/PSL/Peon dated 21.11.2009 addressed to Flag Officer, Commanding in Chief, the Civilian Establishment Officer recommended initiation of necessary action for termination of her services. After due enquiry and procedure, the appointing authority terminated her services by order dated 24.12.2009. This order was based on the basis of unsatisfactory service of the concerned workman and the recommendations made by Flag Officer and the Civilian Establishment Officer.

11. According to the management, concerned workman appealed to the competent authority of the department against the said termination. After due consideration appeal also came to be rejected. It is thus denied by the first party management that the concerned workman was harassed by the officers and management and that she had completed 240 days continuous in service. The first party management has thus sought the rejection of reference.

12. Following issues are framed at Ex.9. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the action of the first party management in terminating the services of the second party workman Ms. Sangeeta G. Kawale, Peon by order dated 24.12.2009 with immediate effect is legal, proper and justified ?	Yes
2.	If not, whether the concerned workman is entitled to be reinstated with full back-wages ?	Entitled to be reinstated as a Probationer
3.	What relief the workman is entitled to ?	As per final order
4.	What Order ?	As per final order

**REASONS****Issue No. 1**

13. So far contention go, it is admitted position that the workman was appointed as a peon by appointment order dt 24/11/2008 on a permanent post. By the said order the concerned workman was placed on probation for the period of two years from the date of joining. The appointment order clause 3 reads as under

“you will be on probation for a period of two years from the date of joining duty. Your services are liable for termination without any notice and without assigning any reasons during the period of probation. After completing the probationary period satisfactorily, you will continue to be in your appointment. Your services are also liable for termination by giving one month’s notice. If you desire to resign from service, you will have to give one month’s notice or one month’s pay and allowances in lieu thereof.”

14. It is also admitted that no departmental inquiry was conducted against the concerned workman. The question creeps in as to whether departmental inquiry was necessary if the termination of the service of the workman is on the ground of alleged acts of misconduct and whether the termination of the concerned workman is in gross violation of Principle of natural justice.

15. Ld. Counsel for the first party urged that the services of the second party workman were terminated following the existing Central Government instruction given in Government of India, Ministry of Home Affairs OM No. 4/10/66 Ests (c) dt 26/8/1967, which provides the non-applicability of Rule-5 of Central Civil Services (Termination of Service) Rules, 1965. He submits that as per this Government instructions when a question has arisen, whether this rule should be invoked also in the case of persons appointed on probation where in the appointment letter, a specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any), has been provided. The position is that CCS (TTS) Rules do not specifically exclude probationer or persons on probation as such. However, in view of the specific condition regarding termination of service without any notice during or at the end of the period of probation including extended period if any, has been decided, in consultation with the Ministry of Law, that in cases where such a provision has been specifically made in the letter of appointment, it would be desirable to terminate the services of the probationer/ person on probation in terms of the letter of appointment and not under Rule 5(1) of the CCS (TS) Rules, 1965.

16. In view of this the submission is that no departmental inquiry is necessary against the concerned workman in view of fact that in her appointment letter it is specifically mentioned that her services are liable to be terminated without any notice or without assigning any reasons during the period of probation.

17. So far facts of the present case are concerned it is no doubt true that the initial appointment of the concerned workman was provisional subject to verification of caste, birth date, School leaving certificates, marital status and other criteria through proper channel and police verification. It is contention of the first party management that the concerned workman deliberately concealed her true material status for the reasons known to her. Although she was married she had presented her as a spinster giving her name Kr. Sangeta G. Kawale her husband’s name was Narendra Ghansyam Singh. She concealed the same. But it was disclosed afterwards and that was the reason to terminate her services.

18. In this respect it has come on record that the concerned workman has filed affidavit Ex-18 even before issuance of appointment letter. In this affidavit Ex-18 dt. 12/11/2008 the workman has specifically declared that she is making the affidavit before concerned authority of Cama Hospital and other concerned authority to prove her marriage. It is clear that even before issuing the appointment order which came to be issued 24/11/2008 the concerned workman has declared in her affidavit that she was married. She made declaration about it to the employer prior to her appointment order. It can be said therefore the employer is aware that the workman is married. It cannot be said therefore the concerned workman has suppressed the fact from the employer to the effect that she is married.

19. The question is whether the post on which the concerned workman was appointed was only for unmarried persons. No any document is produced on record to show that the post on which the concerned workman was appointed was from unmarried persons. I say so because no such advertisement was issued by the employer i.e. the first party management calling for the application for the employment only from unmarried persons and therefore it cannot be said the post on which the workman was appointed was reserved for unmarried persons. In view of that it can be said the concerned workman should have been given an opportunity to establish that she did not conceal essential information about her marital status, if the said termination of her services is on the ground that she concealed information about her marital status.

20. On one hand the first party management has come out a case that the concerned workman was appointed on probation and since she does not satisfy the requirement of the employer her services can be dispensed with, by order

of discharge without holding any inquiry. On the other hand it has come out a case that the services of concerned workman came to be terminated on following misconducts.

- 1- Concealing essential information about her marital status.
- 2- Habitual absenteeism from duty without permission or intimation.
- 3- Dereliction of duty in refusing to do peon's jobs without any valid reasons
- 4- Acts of moral turpitude.

21. In respect of habitual absenteeism from duty without permission or intimation the first party management has come out a case that the concerned workman remained absent from work for total 106 days and the dates are specifically mentioned in the recommendation of termination which is at Ex-11 and proved in evidence of Mr. Ashok Babu Gautam. According to Mr. Gautam concerned workman was absent on duty on following dates:

- 1- From dt. 29/1/2009 to dt. 31/1/2009.
- 2- From dt. 1.2/2009 to dt. 10/2/2009 & dt. 17.2.09 & dt. 24/2/2009.
- 3- On dt. 3.3.2009 & dt. 9.3.2009 & dt. 17.3.2009.
- 4- On dt. 27.4.09.
- 5- From dt. 11.5.2009 to 12.5.2009.
- 6- From dt. 6.8.2009 to dt. 7.8.2009 & dt. 11.8.2009 & dt. 17.8.2009 to dt. 24.8.2009.
- 7- On dt. 10.9.2009 & dt. 12.9.2009 to dt. 17.9.2009 & dt. 22.9.2009 to dt. 30.9.2009.
- 8- From dt. 1.10.2009 to dt. 15.10.2009 & dt. 17.10.2009 to dt. 18.10.2009 & dt. 20.10.2009 to dt. 31.10.2009.
- 9- From 1.11.2009 to 18.11.2009.

22. In this respect if we see the evidence of concerned workman she states that her husband was suffering from T.B. and subsequently was expired on 23/3/2010 and her daughter who does not have right kidney requires constant medication and treatment. In her evidence, it has come on record that whenever she remained absent she used to inform the officials telephonically she informed her superiors about the reason for absence and in this respect her explanation were called and she gave the explanation but she was not granted leave despite of the fact that she used to give application.

23. We have document that is the medical certificate of the daughter of concerned workman at Ex-15. But then the fact remains that the management has come out a case that the concerned workman has submitted dubious medical certificate to justify her absent.

24. Even if, some anxious consideration is given to this aspect of habitual absenteeism from duty without permission of the concerned workman, I find that the opportunity should have been given to her to bring the facts on record as to whether the reasons given by her for her absence on duty, were genuine or not? Merely saying that the certificates submitted by her are false and dubious is no ground to terminate her services without inquiry specifically when according to the management her termination was on the ground of misconduct.

25. In the context hand can be laid on the decision in case of *Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar* Appeal (civil) 1123 of 2006 (SC). In Para 5 of the judgment it has been observed

“The law is well settled that if a probationer does not satisfy the requirements of the employer, his services can be dispensed with by an order of discharge; but if in the order of discharge there is any imputation of misconduct, which may have a bearing on the future employment of the probationer an enquiry in the matter should be conducted and the probationer ought to be given an opportunity to defend himself. Though in the initial order of termination, there is no imputation or any misconduct against the petitioner, in the subsequent order, it has been elaborately recited that the foundation of the order of discharge is on account of financial irregularities committed by the petitioner. The subsequent order which is now challenged, has the effect of casting a stigma on the petitioner and, therefore, not much persuasion is required for this Court to hold that the authority should not have passed the order without affording a reasonable opportunity to the writ petitioner to defend himself of the charges leveled.”

26. In respect of dereliction of duty in refusing to do peon's job without any valid reason it has come on in the evidence of the management that there were frequent complaints from superiors of the concerned workman and therefore warnings, show-cause notices, admonition were issued to her during one year of her service as under:

1. Show-cause dt. 18/3/2009 issued by Capt. Sanjiv K. Kapur, Sr. Education Officer.
2. Warning dt. 21/3/2009 issued by Cdr. P. Kuldip Singh Civilian Establishment officer( AOD).
3. Warning issued by Cdr. P. Singh, Sr. Education Officer.
4. Warning dt. 30/3/2009 issued by Capt. Sanjiv K. Kapur, Sr. Education Officer.
5. Complaint of insubordination dt. 4-13/7/2009 from A.B. Gautam, Civilian Education Instructor-I.
6. Warning dt. 14/7/2009 with investigation report, issued by A.B. Gautam, Civilian Education Instructor-I.
7. Written instructions dt. 31/7/09 issued by Capt. Sanjiv K. Kapur, SEDO.
8. Admonition dt. 8/9/2009 about doing work properly issued by Capt. Sanjiv K. Kapur- SEDO.
9. Show-cause dt. 16/10/2009 issued by Capt. Sanjiv K. Kapur-SEDO.

27. It appears that show cause notice was given to her for unauthorized absence and that time the concerned workman noted and assured that in future she will not give any chance for any kind of complaint whatsoever and ultimately by letter No. 277/PSL/Peon dt. 21/11/2009 a letter was sent to her by flag officer C-in-C Capt. R.S. Chowdhury, Civilian Establishment Officer, who recommended termination of her services.

28. In this respect if we see the evidence of concerned workman she states that she was harassed by her officers of the employer, namely Mr. Babu Gautam, CE-1, Mr. Dharmendra Pande, Sailor Capt. Sanjiv Kapoor, SEDO. According to her evidence they used to assign work to her that was beyond scope of her normal duties. They used to make her repeat cleaning windows and Capt. Kapoor used to tell her to buy cigarettes, bring his personnel computer from his car and deliver to EDP section for repairs. The said Capt. Used to tell her to get liquor bottles from Mess and deliver the bottles to him. He used to give her empty bottles of liquor, Said Captain used to ask her to collect personal clothes for repairs. He used to ask her to by milk and keep it in his car and get his ration. He also asked her to deliver his personal letter at Mumbai Central Station to his Son, who was travelling to Delhi by train. She then states that in her evidence she states that Captain as well as Mr.Gautam used to advise her to leave the job and work in film industry stating that she is beautiful and they used to enquire her about personal and family life. Even sailor used to change her clothes while she used to have lunch.

29. In her Cross-examination it was simply suggested to her that the complaint given by her was imaginary and false. It was tried to show that in her cross-examination, she has stated that she had not filed any complaint in respect of harassment to the employer or to Human Right Commission.

30. However we have documents at Ex-31 'at Sr 12' from pg 43 to 46 below Ex-10 in respect of complaint made by her in respect of her harassment. Ex-32 is the letter by the concerned workman to Chief Administrative Officer regarding her complaint of sexual harassment. In view of that again it was necessary for the first party management to conduct inquiry in respect of alleged harassment of concerned workman which according to the concerned workman resulted in issuing show-cause notice and admonition to her by the concerned officer. Even if the concerned workman has not made compliant to the employer of harassment to her with fear of losing job, but then the employer is duty bound to examine the harassment complaint by the Internal Complaint Committee under sexual harassment of Women at workplace ( Prevention Prohibition, Redressal Act) 2013.

31. In the context reliance is placed on the decision in case of Aarti Durgaram Gavandi Vs. Managing Director Tata Metaliks Limited and Ors., WP 8826/2004, wherein the Hon'ble Bombay High Court in Para 8 of the judgment has observed that as per the guidelines formulated in the judgment of the Supreme Court in Vishaka "it is necessary and expedient for employers in work place as well as other responsible person or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women." It has been observed that Clause 1 of the guidelines imposes a duty upon the employer and other responsible persons in work places to prevent or deter the commission of acts of sexual harassment and to provide procedures for resolution, settlement or prosecution of acts of sexual harassment by taking all steps required. Clause 2 of the guidelines defines the expression "sexual harassment". Clause 3 requires all employers or persons in-charge of work places whether in the public or private sectors to take appropriate steps to prevent sexual harassment. It has been observed in the said judgment that the complaints committee be headed by women and not less than half of its member should be women and when the complaint is received even after the termination of the services of lady employee the employer is duty bound to examine the complaint by internal complaint committee.

32. In view of this legal position it was necessary for the first party employer to hold inquiry in respect of the harassment of the concerned workman before or after of the termination of the services.

33. That apart the fact remains that the concerned workman preferred appeal against the termination order and the appellate authority has narrated the misconduct as cause of termination of services and rejected the appeal of the

workman. Therefore the order of termination is merged into the order of appellate authority to make it clear that the termination of concerned workman was on the ground of misconduct. If the termination of workman was on the ground of misconduct then the disciplinary authority should have initiated appropriate disciplinary proceedings.

34. In the context the reliance is placed on the decision in case of *Abhijeet Bhattacharjee Vs State of West Bengal* 2009 Lab IC 3712. In Para 17 of the judgment while referring to the judgment in case of *Jarnail Singh and ors. Vs. State of Punjab* and ors. reported in AIR 1986 SC 1626, it has been observed that

“mere form of order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an ad hoc appointee is a termination simplicitor in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is substance of order i.e. the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words, when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the Court, in such case, will lift the veil and will see whether the order was made on ground of misconduct, inefficiency or not.”

35. In the instant case as seen earlier it is also a case of the employer that the termination of the concerned workman was on the ground of misconduct. Even the order of appellate authority refers to the misconduct and directed the misconduct as the cause of termination of services. In view of this I find that it was obligatory on the part of first party employer to hold the departmental inquiry in respect of alleged misconduct before issuing a termination order.

36. Even then Learned Counsel for the management submitted that the concerned workman was temporary employee. She made false statement while getting employment in respect of her marital status and therefore her termination during probation period without holding any enquiry is legal and proper. He seeks to rely on the decision in case of *Employees in relation to Management of Lodhna Colliery of M/s. BCC Ltd., Dhanbag V/S. Presiding Officer*, 2008 I CLR 255.

37. In that case the termination was in terms of stipulation of employment. The workmen services came to be terminated as their caste certificates which was base for their employment was found fake. Here in the instant case the post on which the workman was appointed was not reserved for un-married persons. It was not the basis for the employment of the said post that the person to be appointed should be un-married. Even otherwise it can be seen from the record that the concerned workman in her affidavit which was given by her even before receiving the appointment order has specifically declared that she is married and the employer is also aware that the concerned workman is married. It cannot be said therefore that the concerned workman has made a false statement while getting the employment. In view of that the facts in the present case are quite distinct and distinguishable.

38. Same can be said in respect of the judgment relied upon by the Learned Counsel for the management when he seeks to rely on the decision in case of *Management of Bharatiya Reserve Bank Note Mudran Ltd., Mysore and P. Shanmuga Prabhu* 2009 I LAN 452. In that case the domestic enquiry was held. Division Bench held that the tribunal although held domestic enquiry to be fair and proper and that no further enquiry was necessary in the absence of allegations of victimization or unfair labour practices, it cannot hold punishment to be harsh and invoke provisions of section 11 (a) of the act. It was finding of the fact in that case that the Respondent made false statement while getting the employment and therefore it was considered that he cannot continue in service and therefore the dismissal order was held to be justified.

39. In the present case the management has not held the domestic enquiry when infact the enquiry was necessary since the termination was on the ground of misconduct.

40. Learned Counsel for the management seeks to rely on the decision in case of *Central Airman's Selection Board and Ors. V/S. Surendra Kumar Das* AIR 2003 SC 240 wherein it is held that person who mislead the authority to take the decision cannot invoke the principle of promissory estoppel. Again the facts in present case are quite distinct and distinguishable.

41. It is the submission of Learned Counsel for the management that termination of an employee who is appointed purely on temporary basis for a fixed term is legal. In the context he seeks to rely on the decision in case of *Nilesh M. Mahareswar V/S. Presiding Officer*, 2009 II CLR 381. In that case the employee was appointed on purely provisional basis for a period of six months and on condition that he would show the aptitude towards punctuality in attendance and devotion to duty. After six months his services were terminated without assigning any reason. It was considered that the temporary employee who is appointed for a fixed period came to be terminated and that order of termination does not amount to retrenchment.

42. Here in the instant case the concerned workman was appointed on probation on permanent post. It was not an appointment for a fixed period. Therefore observations in the cited dictum does not help the first party management.

43. Considering all these facts, I find that the termination of the concerned workman was on the ground of misconducts alleging that she concealed the essential information about her marital status and that she remained absent from duty without permission and intimation. It is also alleged that she refused to do jobs without any valid reasons. So when the termination is on the ground of misconduct the departmental enquiry is necessary. Since the departmental enquiry was not held and the opportunity was not given to the concerned workman to explain the circumstances and to adduce the evidence in respect of alleged misconduct, the termination of her services by order dated 14.12.2009 with immediate effect is illegal, improper and unjustified. Issue No.1 is therefore answered accordingly in affirmative.

#### **Issue No. 2**

44. In this respect Learned Counsel for the management submitted that the concerned workman was appointed on probation for two years and therefore she cannot be reinstated even if the termination of the workman is illegal and in contravention of prescribed procedure. He submits that since the workman was appointed on probation for two years and had passed only one year, the right to decide as to her suitability of her post would vest on the employer. If suppose the workman is reinstated he would have to be reverted to her statuesque-anti i.e. reinstated as a probationer who has passed one year of her probation out of total two. At the end of probation after one year the first party management will have right to decide about her continuation or termination. This right of the first party management cannot be taken away and therefore there is no question of regularization of the concerned workman at present with continuity of service unless the first party management's right to decide about her continuation is exercised. He submits that tribunal can consider only about the reinstatement and not about regularization with continuity of service. In the context he seeks to rely on the decision in case of Manager, Telephone Nigam Ltd. V/S. Deepak Sadashiv Shirkhande & Ors., 2010 III CLR 473 wherein it is held that the relief of regularization cannot be granted as the reference made by the appropriate government only related to reinstatement.

45. On going through the terms of reference it can be seen that the reference relates to demand of reinstatement in service and not for regularization. In view of that the concerned workman is entitled to reinstatement as a probationer who has completed one year of her probation out of two with a right to employer to decide her suitability for the post after completion of probation period of one year. Accordingly, I answer Issue No.2 as indicated against it.

#### **Issues No. 3 & 4**

46. In view of my findings to the above issues, the concerned workman is entitled to be reinstated as a probationer who has completed one year of her probation with right to the first party management to decide her suitability for the post after completion of two years. Hence I pass the following order.

#### **ORDER**

- (1) The order of termination of the services of Ms. Sangita Ganpat Kawale, Peon dated 24.12.2009 is illegal, improper and unjustified.
- (2) She be reinstated as a probationer who has completed one year of her probation.

Date: 03.08.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2017

**का.आ. 2337.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स व कैस्टेलिनो, कामत एंड कंपनी, मुंबई व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. II, मुंबई के पंचाट (संदर्भ संख्या 2/1 ऑफ 2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.09.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 27th September, 2017

**S.O. 2337.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Reference No. CGIT 2/1 of 2013) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the M/s. Pereira & Castelino C/o Kamat & Company, Mumbai & Others and their workman, which was received by the Central Government on 25.09.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT : M. V. DESHPANDE, Presiding Officer****APPLICATION [REF] NO.CGIT-2/1 of 2013****EMPLOYERS IN RELATION TO THE MANAGEMENT OF****M/S. PEREIRA & CASTELINO & VENKATESH GOVIND KAMAT**

1. M/s. Pereira & Castelino,  
C/o. Kamat & Company,  
2<sup>nd</sup> floor, Asha Building  
17, R. Kamani Marg  
Ballard Estate  
Mumbai – 400 038.
2. Mr. Venkatesh Govind Kamat,  
Managing Partner,  
M/s. Pereira & Castelino,  
C/o. Kamat & Company  
2<sup>nd</sup> floor, Asha Building  
17, R. Kamani Marg  
Ballard Estate  
Mumbai – 400 038.

**AND****THEIR WORKMEN**

Mr. Dilip Manohar Desai,  
13/416, D.N. Manzil,  
Congress House, V.P. Road,  
Mumbai – 400 004.

**APPEARANCES :**

FOR THE EMPLOYER : -----

FOR THE WORKMEN : Mr. A.P. Sawant, Advocate

**Mumbai, dated the 10<sup>th</sup> August, 2017.****AWARD**

1. This is reference under section 2A read with section 10 and sub-section 2 (ra) Schedule V, clause 5 (a), (b) (d) and (f) of the Industrial Disputes Act, 1947.
2. After termination of services of the concerned workman he raised the industrial dispute before the Conciliation Officer dated 14.12.2012. Thereafter the Conciliation Officer called both the parties for negotiation. The dispute could not be settled. Conciliation Officer has issued certificate dated 30.05.2013 and directed the concerned workman to approach directly under sub section (2) & (3) of section 2(A) of the Industrial Disputes (Amendment) act, 2010 to the Central Government Industrial Tribunal – cum – Labour court for adjudication of dispute. Hence the concerned workman has approached this tribunal along with certificate dated 30.05.2013 which is annexed and marked as Annexure – A.
3. According to the concerned workman namely Mr. Dilip Manohar Desai he was working with first party No.1 company M/s. Pereira & Castelino as a Clerk since 1977. When he joined the Respondent firm he has started work with M/s. Kamat & Company having its office at 2<sup>nd</sup> floor, Asian Bldg., 17, R. Kamani Marg, Ballard Estate, Mumbai.
4. According to concerned workman, the business of the Opposite No.1 firm is to act as a clearing and forwarding agent. This includes documentations, cargo job for import and export consignments. He was assigned the job of clearing the documentation part for which he used to work upto 11.30 to 12.00 p.m. Since the documentations of consignments is an important job he was doing it without following the duty hours. Even he used to work on bank holidays for which he was not getting over time and compensatory off for it.
5. It is a case of concerned workman that he was working on clear and permanent post. He has completed 240 days in every calendar year. His last drawn salary was Approx. Rs.20,000/- p.m. He worked with first party company

for about 35 years. Initially first party illegally without assigning any reason orally asked him to leave the office of the firm as his services are no more required. But when he refused to leave the work premises unless the reason is given in writing, the first party No.2 has issued termination letter dated 9.1.2012. The first party No.2 has put stigma on the second party workman while terminating his services. His services came to be terminated without issuing any show cause notice, charge sheet or conducting the departmental enquiry. As such while terminating his services first party have not followed the principles of natural justice. At the time of termination of his service the first party failed to comply with the requirements of section 25 (F), 25 (G) and 25 (H) of I.D. Act, 1947. The first party also failed to comply with the provisions of section 25 (G) which apply the rules of last cum first go. At the time of termination the first party did not publish seniority list of the employees and also failed to comply with the provisions of I.D. Act, 1947. As such his services came to be terminated without following the due process of law. The action of first party in terminating the services of second party workman is by way of victimization. The services of second party workman came to be terminated illegally w.e.f. 9.1.2012. He therefore wrote letter to first party on 2.3.2012 but the first party are not given any reply to the said letter though it was received by them. The first party have not followed the provisions of 25 (F) of I.D. Act, 1947.

6. According to second party workman, he has approached the management with a request to reinstatement him with full back wages and continuity of service w.e.f. 9.1.2012 with all other consequential benefits till the date of reinstatement vide letter dated 16.11.2012. His demand was not considered by the first party therefore he has filed justification statement dated 5.12.2012 before Dy. Commissioner of The Regional Labour Commissioner (Central), Mumbai for intervention/ initiation of conciliation proceedings. Conciliation failed. Hence this reference.

7. The concerned workman is therefore asking for declaration to the effect that the termination of the second party employee from his services on or from 9.1.2012 is illegal, malafide, arbitrary, vindictive and against the principles of natural justice and without following rules and due process of law. He is therefore asking for reinstatement on its original post with full back wages and continuity of service with consequential, attendant and allied benefits w.e.f. 9.1.2012 till the date of reinstatement.

8. No written statement is filed by the first parties and the reference proceeded without their written statements.

9. Following issues were framed at Ex.15. I reproduce the issues along with my findings thereon for the reasons to follow.

Sr. No.	Issues	Findings
1.	Whether the second party employee proves that, his services were illegally terminated by the first party company ?	Yes
2.	Whether the second party employee proves that, he is entitled to get the relief of reinstatement with back-wages and other consequential benefits w.e.f. 9.1.2012 ?	Yes
3.	What Order ?	As per final order

## REASONS

### Issue No. 1

10. In this respect the concerned workman Mr. Dilip Manohar Desai has filed affidavit Ex.16 and reiterated its contention which he has made in his statement of claim. It has come in his evidence that he was working on clear and permanent post as a clerk since 1977 with first party company but then the first party have not given him any appointment letter or salary slip. He was assigned the job of clearing the documentation part for which he used to work upto 11.30 to 12.00 p.m. and at times he used to work on bank holidays but he was not given overtime or compensatory off. This sort of evidence of the second party workman has gone unchallenged as there is no cross-examination directed against him. Whatever he has stated in his affidavit, has remained un-shaken.

11. We have document i.e. termination letter dated 9.1.2012. On going through this document Annexure – B, it appears that services of Mr. Dilip Manohar Desai was terminated on the ground of careless attitude which resulted indiscipline amongst rest of employees in the Organisation. What is stated in the termination letter is as follows:

“You have been warned several times i.e. more than ten times regarding improvement of your poor services to this Organisation in order to avoid termination of your services from this Organisation.

Inspite of several warnings and also penalty imposed upon you, which you have paid without any protest whatsoever you have never bothered to take any cognizance of same and have continued with your careless attitude which results in indiscipline amongst rest of the employees in the Organisation. This cannot be tolerated any further therefore, we hereby terminate your services w.e.f. 9.1.2012. Kindly come forth and claim your dues from the company in view of aforesaid termination of your services.”

The question is whether this termination of the concerned workman puts stigma on second party workman ? And if it puts stigma on him then whether domestic enquiry was necessary or not ?

12. Here in the instant case, it appears that no show cause notice was given to the second party workman, no any charge sheet was issued or no domestic enquiry was initiated against the second party workman. On the contrary from the pleadings in the statement of claim and from the evidence of the concerned workman it appears that he has worked for more than 240 days in every year. He worked with the first parties for about 35 years. In such circumstances the termination of concerned workman for unjustified work as is stated in the termination letter without any notice or charge-sheet or opportunity or hearing will be illegal.

13. In case of *Devendra Prasad Sharma V/S. Union of India & Ors.* 2007 III CLR 308 (Bombay High Court), it has been held that the termination of services of RPF Jawan during his probation for gross neglect in duty and discreditable conduct cannot be sustained since no show cause notice was given or enquiry was held. It is held that

“Impugned order is stigmatic and that to without holding the enquiry. Petitioner ought to have been given chance to explain. Impugned order cannot be sustained.”

In view of this legal position even the termination of the concerned workman on the ground of unjustified work without any notice or charge sheet or opportunity or hearing to him will be illegal.

14. From the evidence of second party workman, it appears that he has worked for more than 240 days in every year. Naturally therefore it was obligatory on the part of first parties to comply with the requirements of section 25 (F), 25 (G) and 25 (H) of I.D. Act, 1947. It appears that first parties have not complied i.e. the requirements and issued the termination letter without holding any enquiry. Such termination is illegal.

15. In the context, the Learned Counsel for the second party workman seeks to rely on the decision in case of *Sachiv Krishi Upaj Mandi Samiti V/S. Aditya S/o. Baijanath Shukla* 2003 LLR 417. In para 3 of the judgment it has been observed that on the basis of facts and evidence it has been concluded that the Respondent has worked continuously for more than 240 days in one calendar year and that no charge sheet or any enquiry was held prior to his termination. No retrenchment compensation was paid prior to impugned termination. It was a case of dismissal without any basis or charge. In view of this it is observed that the reinstatement with full back wages will be appropriate relief to the workman whose services have been terminated without enquiry or payment of retrenchment compensation when he worked for more than 240 days before his termination.

16. In his evidence, Mr. Dilip Manohar Desai has stated that as per the instructions of first party No.2, he has signed the voucher but he is not aware of the contents of the said voucher. According to him he was not paid earned wages for the period of his service at the time of his termination. He then states that he was forced to accept the earned wages for December 2011 but he was not paid balance privileged leave for 225 days till the date of his termination. He was making an application for PL but he was not allowed to go on PL. He then states that he has accepted the amount under protest since he was threatened by the party No.2. This sort of evidence of the second party workman has gone unchallenged as there is no cross-examination directed against it.

17. The fact remains that the concerned workman has submitted letter of demand for reinstatement with continuity of service to first party No.2 on 16.11.2012 and the demand has not been complied. It is in the circumstances he submitted the justification statement in support of his demand to RLC [C], Mumbai mentioning therein the state of affairs and it appears that the conciliation is failed.

18. Considering all these facts, I find that the evidence of second party workman has gone unchallenged. Even the termination letter puts stigma on him and such termination without issuing show cause notice or without holding any domestic enquiry is illegal. Consequently, I hold that the second party workman has proved that his services were illegally terminated by the first party companies. Issue No.1 is therefore answered accordingly in the affirmative.

### Issues Nos. 2 & 3

19. In view of my findings to Issue No.1, second party workman is entitled to get the relief of reinstatement with back wages and other consequential benefits w.e.f. 9.1.2012. Hence I pass the following order.

**ORDER**

1. The termination of the second party workman Mr. Dilip Manohar Desai from his services on or from 9.1.2012 by first parties is illegal and unjustified.
2. He is entitled to be reinstated on his original post with full back wages with continuity of service and other consequential benefits w.e.f. 9.1.2012 till date of reinstatement.
3. Award be passed accordingly.

Date: 10.08.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2017

**का.आ. 2338.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, पोमेग्रेनेट राष्ट्रीय अनुसंधान केंद्र, सोलापुर व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. II, मुंबई के पंचाट (संदर्भ संख्या 2/53 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.08.2017 को प्राप्त हुआ था।

[ सं. एल-42012/52/2014-आईआर (डीयू) ]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 27th September, 2017

**S.O. 2338.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Reference No. CGIT 2/53 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the Director, National Research Centre for Pomegranate, Solapur & Others and their workman, which was received by the Central Government on 03.08.2017.

[No. L-42012/52/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT : M. V. DESHPANDE, Presiding Officer****REFERENCE NO. CGIT-2/53 of 2014****EMPLOYERS IN RELATION TO THE MANAGEMENT OF****(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE**

The Director  
National Research Centre for Pomegranate  
Near Solapur University  
Solapur (MS).

**(2) M/S. SWADESHI SECURITIES**

M/s. Swadeshi Securities  
96, Salgar Vasti  
Dongaon Road  
Solapur (MS).

**AND****THEIR WORKMAN**

Shri Shivaji Bhagwan Shinde  
R/o. SAwargaon (Kapashi)  
Tal. Barshi  
Maharashtra 413 412.

**APPEARANCES:**

FOR THE EMPLOYER NO. 1 : Mr. S.P. Chinchwadkar, Advocate  
 FOR THE EMPLOYER NO. 2 : No appearance  
 FOR THE WORKMAN : No appearance

Mumbai, dated the 11<sup>th</sup> July, 2017.

**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-42012/52/2014-IR (DU), dated 22.07.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

*“Whether the demand of the workman Shri Shivaji Bhagwan Shinde for asking regularisation as an employee of National Research Centre for Pomegranate, Solapur is legal and justified? If yes to what relief the workman is entitled to?”*

2. After receipt of the Reference, notices were served on both the parties. Matter was adjourned on several occasions for filing Statement of Claim by second party/Workman. Second party/Workman neither appeared before this Tribunal nor filed Statement of claim. Without Statement of claim, the Reference cannot be decided on merits and the same deserves to be dismissed. Hence, I pass the following order:

**ORDER**

Reference stands dismissed for want of prosecution.

Date: 11.07.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2017

**का.आ. 2339.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, एसएनआईसी तकनीकी सेवाएं केंद्र, राजकोट, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 154/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.09.2017 को प्राप्त हुआ था।

[सं. एल-42011/93/2013-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 27th September, 2017

**S.O. 2339.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGITA No. 154/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Director, SNIC Technical Services Centre, Rajkot, Gujarat and their workman, which was received by the Central Government on 21.09.2017.

[No. L-42011/93/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD**

**Present :**

Pramod Kumar Chaturvedi,  
 Presiding Officer, CGIT-cum-Labour Court,  
 Ahmedabad,  
 Dated 08<sup>th</sup> September, 2017

**Reference: (CGITA) No. 154/2013**

The Director,  
SNIC Technical Services Centre,  
80 Ft Road, Near Bhavnagar Road Crossing,  
Aji Industrial Area,  
Rajkot (Gujarat) – 360003

...First Party

V/s

The President,  
PTC Employees Association,  
9, Ruchi House, Opp. Jasani Park,  
Near Airport Road,  
Rajkot (Gujarat)

...Second Party

For the First Party : None

For the Second Party : None

### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42011/93/2013-IR(DU) dated 04/06.09.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

### SCHEDULE

“Whether the action of the management of NSIC Technical Services Centre, Rajkot (previously known as Prototype Technical Centre) in terminating the services of Shri C.P. Shahani, Ex-Hostel Warden w.e.f. 12.04.1998 is justified? To what relief the concerned workman is entitled to?”

1. The reference dates back to 04/06.09.2013. Both the parties were issued notices by registered post. The notice Ex. 2 was served on both the parties by acknowledgement Ex. 3 and 4 on 23.02.2015 wherein the second party was asked to submit the statement of claim on 23.02.2015 but till date despite giving 10 opportunities thereafter, for submitting statement of claim, the second party union PTC Employees Association or the workman have not preferred to submit the statement of claim. Thus it appears that the second party workman and his union have not been willing to prosecute the case.
2. Therefore, the reference is disposed of in the absence of the statement of claim and evidence, if any, of the second party, with the observation as under: “the action of the management of NSIC Technical Services Centre, Rajkot (previously known as Prototype Technical Centre) in terminating the services of Shri C.P. Shahani, Ex-Hostel Warden w.e.f. 12.04.1998 is justified.”

P. K. CHATURVEDI, Presiding Officer